

Electronic signatures and the use of technology in Jersey

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Introduction

In light of the COVID-19 (coronavirus) pandemic, many of us are having to implement measures that see all or a majority of our workforces transition to working remotely, we have received a number of queries regarding the impact that this is likely to have on closing transactions.

This note provides an overview of the legal framework on electronic signatures (e-signatures) in Jersey and some practical assistance that we can provide to ensure that your transactions continue to run smoothly despite the challenges being faced as a result of restrictions on movement and social distancing measures.

We anticipate that the law and practice in this area will be fast moving and we will prepare further updates as and when appropriate to keep you abreast of these developments.

Current legal framework

From a legal perspective, Jersey is well placed for the use of electronic signatures. In Jersey, generally, an electronic signature will be legally effective to conclude a contract, so long as:

- for a legal entity, there are no restrictions on the use of electronic signatures in its constitutional documents (this is particularly relevant when a company had old or outdated constitutions);
- the law of the place of a company's incorporation (if not Jersey) permits electronic signatures and doesn't otherwise contain restrictions on the type of document that can be signed by way of electronic signature;
- there is nothing in the contractual terms themselves that prohibit electronic signatures; and
- it is applied with the requisite intent and appropriate authority.

The Electronic Communications (Jersey) Law 2000 (the **Communications Law**) was amended on 9 October 2019 by the Electronic Communications (Amendment of Law) (Jersey) Regulations 2019 to clarify the provisions around electronic information, electronic signatures, and the making of contracts by electronic means. A signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability only because it is in electronic form as long as the above pre-conditions are carefully considered and confirmed.

The Communications Law also does not cover physical practicalities legally required to execute certain documents from time to time, such as a power of attorney granted under the Powers of Attorney (Jersey) Law 1995 granted by individuals which will need to be signed in the presence of a witness in order to be effective. In such instance, consideration should be given to how this will be achieved and Ogier can and has assisted in that respect.

It is worth considering at an early stage in all transactions how closing will be implemented and whether electronic signatures are possible. For example, it may be possible to amend constitutional documents to specifically provide for electronic signatures if they do not do so already or a company's board may wish to consider putting in place standing authorities to allow certain directors and employees with authorised signatory status to bind the company electronically.

Regulators

Some of our key regulators in Jersey have also shown particular pragmatism at this time. Two examples of this are:

- The Jersey Financial Services Commission (JFSC): They have confirmed that whilst their physical premises are closed, a flexible business continuity strategy is being implemented and that they intend to take as pragmatic an approach as possible when dealing with filings, submission and responding to clients. They expect to deal with the majority of filings and submissions online.
- The International Stock Exchange Authority (TISE): They have also confirmed that they intend to provide appropriate flexibility to ensure effective business continuity for the benefit of its members and issuers. TISE also has a solid track record when it comes to going digital and has issued statements and guidance to members and issuers to assist them during this period.

The Ogier approach

As part of our commitment to innovation as a core pillar of our service delivery, Ogier has invested heavily in technology over the past few years to enhance the way we do business and deliver our services to clients. This places us in a position of strength in these challenging times. A few examples of how we can assist include:

- Docusign: We were an early adopter of this software, which allows our teams as well as third parties to securely sign a wide range of documents electronically. This can be done from a mobile device and takes only moments to complete. The fact that we have been using it for a number of years and have experience of "virtual closings" should assist us in offering our usual high level of service to clients.
- Virtual meetings: We have the technology to arrange video (up to 50 participants) or audio (up to 250 participants) meetings and calls that can be used as part of the completion mechanics of a transaction.
- Compiling documents: We rely on software to electronically date and otherwise compile counterparts of documents as well as electronic bibles.
- Full remote working capabilities: We have the infrastructure and support teams that enables our entire global business to work remotely and so far we have seen a seamless transition and in many ways its business as usual for us.

This is another example of how at Ogier we make the complex simpler. Contact our corporate team should you have queries or require our assistance.

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.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under Legal Notice

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