

Use of digital contracts and electronic signatures in the Cayman Islands

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Introduction

In light of the COVID-19 pandemic and with many people around the world working remotely, we have received a number of queries from clients who are increasingly considering the use of digital contracts and electronic signatures (e-signatures). To help minimise disruptions and ensure that your business continues to run smoothly over the coming weeks, please see below a summary of the legal position in the Cayman Islands and some practical advice on implementation.

The enforceability of digital contracts and electronic signatures is governed by the Electronic Transactions Law (2003 Revision) (ETL). In summary:

- communication of a contract through electronic means, including acceptance by way of a reliable electronic signature, is permitted under Cayman law, provided that such contract meets other requirements of a legal contract generally; and
- electronic signatures are acceptable and enforceable under Cayman law provided that they meet the "reliability" criteria set out in the ETL.

Please note that the ETL does not apply to any document or signature relating to the creation, execution, variation or revocation of a will or other testamentary instrument.

Digital contracts under the ETL

The ETL provides that, subject to any provision to the contrary in an offer, any offer, acceptance of an offer and information relating to payment and consideration can be expressed by electronic means. In addition, the legal effect or validity of statements and declarations is not affected solely because such statements or declarations are in an electronic form.

Therefore, provided that the relevant documents meet the general requirements of a binding contract under Cayman law, the use of digital contracts does not affect their validity or enforceability. By way of example, this may include using online portals to negotiate, amend, upload and/or transmit contractual documents.

Electronic signatures under the ETL

Under the ETL, electronic signatures have the same legal effect as a wet ink signature provided that the electronic signatures, and the method of creating such electronic signatures:

- are *reliable* in light of their purpose and the circumstances (please see below on reliability requirements under the ETL); and
- otherwise meet the requirements of all relevant legislation, regulation, contract or deed with respect to such signatures.

An electronic signature is deemed "reliable" if:

- the means of creating the electronic signature is linked to the relevant signatory and no other person;
- at the time of signing, the means of creating the electronic signature is under the control of the relevant signatory and of no other person;
- any alteration to the electronic signature made after the time of signing is detectable; and
- where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.

Under the ETL, any person relying on an electronic signature shall bear the legal consequences of the failure to take reasonable steps to verify the reliability of an electronic signature.

Please note the following practical considerations you may wish to take into account with respect to the use of and reliance upon electronic signatures:

- Similar to reliance on wet ink signatures, any person relying on an electronic signature will need to ensure that the relevant signatory has been properly authorised.
- We would usually expect the "reliability" criteria set out in the ETL to be satisfied if you are

relying on a reputable digital signature service such as DocuSign, Adobe Sign or eSign.

- You should pay particular attention to ensure the e-mail addresses of all signatories are authentic and familiar for the purpose of circulating electronic signing instructions.
- Electronic execution instructions for different signatories should be circulated separately to ensure the means of creating the electronic signature is only under the control of the relevant signatory.
- If you do not wish to use third party digital signing services, it is important that the electronic signatures meet the reliability requirements. For example, this may include:
 - ensuring that clear records are maintained (such as filing relevant email correspondence) with respect to the creation and use of any electronic signatures; and
 - confirming that all electronic signatures cannot be amended without detection once created.

Cayman Islands Monetary Authority (CIMA)

CIMA has recently issued public notices in relation to electronic signatures and certification or notarisation of documents. To date, the following measures have been adopted by CIMA to lessen any challenges its licensees and registrants may face:

- CIMA will accept affidavits or other documents that have been notarised or certified via the DocuSign process or through utilising audio-video technology (we note that DocuSign was the only service provider named in CIMA's notice).
- For new fund registrations, in lieu of a notarised affidavit, CIMA will accept written confirmation from an operator of a fund authorising the registered office or other service provider to file the fund's registration or application on behalf of the operator.
- For fund de-registrations, CIMA will accept uncertified resolutions that confirm the de-registration or cancellation date of a fund.

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 are very experienced with electronic execution of documents 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 to assist your business.
- **Full remote working capabilities:** We have the infrastructure and support teams that enable 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.

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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