

The use of electronic signatures in Jersey



Wendy Lambert
Partner



Ashley Quenault
English Solicitor



Nour Belal
English Solicitor

Introduction

The use of electronic signatures is not a new concept but in the current climate there is an increasing focus on how documents can be signed electronically. Jersey is also seeking to establish itself as a digital centre of excellence so it is expected that the use of electronic signatures in certain Jersey law governed contracts may become more commonplace.

The purpose of this briefing is to consider electronic signatures from a Jersey law perspective, in particular, how the law treats electronic signatures, the sort of things that should be considered before using an electronic signature and in what circumstances it may not be appropriate to use an electronic signature.

What is an electronic signature

This is defined under the Electronic Communications (Jersey) Law 2000 (the Law) as: “a signature in electronic form attached to or logically associated with an electronic communication or electronic record”. This can come in various forms including:

- A person typing their name into a contract;
- Using a JPEG image of their signature and affixing it to a contract;
- Signing electronically using a finger or stylus on a touchscreen; or
- Signing through an e-signing platform

Validity under Jersey Law

The Law is similar to the UK Electronic Communications Act 2000, accordingly guidance issued by the English courts is likely to be persuasive. That being said, the law has always recognised that contracts may be formed through electronic means.

The Law Commission of England and Wales concluded an investigation into the electronic execution of documents in 2019 and concluded that an electronic signature is capable of being used to execute a document provided that the person signing the document intends to authenticate the document and any formalities relating to the execution of the document is also satisfied.

Evidential weight

Naturally not all electronic signatures will have the same evidential weight or be sufficiently secure, reliable and resilient to fraud.

For instance, typing a name into a document is really easy to do and won't be as resilient to fraud as using a JPEG image of a signature or using an e-signing platform.

The most resilient method for applying electronic signatures is the use of an e-signing platform as these tend to send PIN numbers or passwords to signatories' mobile devices to allow them to access the platform. In addition the benefit of an e-signing platform is that a completion certificate is generated at the end of the process which represents an audit trail which would provide conclusive proof of a signatory's intention to authenticate the document.

Other considerations

On top of legal validity and evidential weight, one should also be alert to some of the following:

- **Corporate capacity, authority and internal risk policies** if a company is a contracting party, its articles of association should be reviewed to confirm that there are no prohibitions on using electronic signatures. As a company itself cannot have an electronic signature and instead relies on the agency of its authorised signatories it will be necessary to ensure that the signatory has the authority to

The use of electronic signatures in Jersey cont.

electronically sign and apply their electronic signature to the document. It is also worth checking parties' internal risk policies and ensuring that that organisation permits documents to be signed electronically.

- **Signing formalities** – any necessary signing formalities must be complied with. This means that it is not possible for electronic signatures to be applied to Jersey Wills, powers of attorney granted under the Powers of Attorney (Jersey) Law 1995, nor any other documents that need to be given to a Jersey court as these require physical wet ink signatures. If a document needs to be witnessed, normally the witness must be physically present where the signatory electronically signs the document. However, in light of the current COVID-19 pandemic, the States of Jersey realised such stringent witnessing requirements were not appropriate for certain documents. As such they have temporarily enacted the COVID-19 (Signing of Instruments) (Jersey) Regulations 2020 and the Bailiff has also issued a series of directions surrounding the execution of Powers of Attorney and Affidavits. These regulations and directions combined make it permissible for witnesses to witness the execution of: (1) Powers of Attorney; (2) Grants of Probate or Letters of Administration; (3) Wills of Movable and Immovable Estate; and (4) Affidavits; via a video link. There are some formalities that still need to be complied with during and after the witnessing of each of those documents which is beyond the scope of this briefing.
- **Cross-border implications** – if a transaction involves a non-Jersey party or a non-Jersey law governed document and there is a possibility that that document may need to be produced and relied upon as evidence in that foreign jurisdiction, advice should be sought from a lawyer in that jurisdiction on the validity and admissibility of electronic signatures in that jurisdiction. If a document needs to be notarised or apostilled in another jurisdiction, then it may not be possible for that document to be signed electronically, as the notary may only accept wet ink signed documents.

Practical Considerations

There are a number of practical concerns that should be considered when using electronic signatures. Upfront planning is key. It is important to identify and understand how all parties intend to sign the document. If electronic signatures are going to be used, these need to be acceptable to everybody. Note, not all parties need to sign using electronic signatures. It is possible for some parties to sign in wet ink and others to sign electronically, however the original executed document will have to be compiled of the counterparts of each party's signed document.

Contact

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the details below.

Wendy Lambert, Partner

+44 (0) 1534 760 882

wendy.lambert@bcrlawllp.com

Ashley Quenault, English Solicitor

+44 (0) 1534 760 856

ashley.quenault@bcrlawllp.com

Nour Belal, English Solicitor

+44 (0) 1534 760 886

nour.belal@bcrlawllp.com