

UPDATE

Use of electronic signatures by a Guernsey company

Update prepared by John Lewis (Partner, Guernsey)

Basic contracts and most other documents can be signed by a Guernsey company using an electronic signature. That was the case under Guernsey customary law (following UK common law) and this was confirmed by The Electronic Transactions (Guernsey) Law, 2000 (ETGL).

The electronic signature does not need to be in any specific form or have any degree of authentication (e.g. by DocuSign or Adobe Sign) but this may provide additional comfort to the parties.

It is still important to check that the articles of incorporation are not inconsistent with the use of an electronic signature. We also recommend that the use of an electronic signature is specifically authorised by the board resolution approving the document.

There may be practical difficulties if a witness to any signature is required, and the witness is unable to be in the same physical place as the signatory. However, the Companies (Companies) Law, 2008 does not require any document entered into by the Company to be witnessed. In this context, it is worth noting that Guernsey law does not treat a deed as different from any other type of document.

For certain documents such as powers of attorney, trusts and contracts and conveyances of real property, the position is more complicated and will depend on the circumstances. This includes documents containing powers of attorney and trust provisions, for example security, shareholder and partnership agreements. Under the Electronic Transactions (Exemptions) Order, 2001 these documents do not benefit from the provisions of the ETGL. Our view is that this legislation does not prohibit the use of electronic signatures for such documents from 2001 onwards, it merely provides that those which had historically required a physical signature and/or special procedures such as notarisation would continue to require a physical signature (unaffected by the ETGL) and those which did not could continue to be signed electronically. We believe this view is consistent with the explanatory notes to the Exemptions Order.

Real property

Conveyances and contracts in respect of Guernsey real property have to be in a specific form that is not consistent with the use of electronic signatures.

In respect of real property outside Guernsey, we see no reason why a Guernsey company could not execute conveyances and contracts electronically, provided that this is permitted by the law of the jurisdiction where the property is situated.

Powers of attorney (including security)

A Guernsey company may execute a power of attorney or a document containing a power of attorney using an electronic signature. This was the Guernsey customary law position prior to the ETGL and Exemptions Order and we do not believe the legislation changes that position.

In contrast, an electronic signature would not work for an enduring power of attorney signed by an individual in Guernsey.

We do however recommend that any power of attorney or document containing a power of attorney appoints the delegate/authorised person of the Guernsey company as "agent and attorney" and includes an appropriate severance clause.

Declarations of trust

A document declaring an express trust under Guernsey law should not be signed under electronic signature.

Where the trust is not governed by Guernsey law, we see no reason why a Guernsey company could not sign the document by means of an electronic signature, if permitted by the governing law of the trust.

Contacts



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