

**ELECTRONIC SIGNATURES AND TAKING COMPANY DECISIONS VIRTUALLY – Q&A (BVI, CAYMAN, GUERNSEY, JERSEY)**



	<b>GUERNSEY</b>	<b>JERSEY</b>	<b>CAYMAN</b>	<b>BVI</b>
<b>PRINCIPAL LEGISLATION</b>	<p>The Electronic Transactions (Guernsey) Law, 2000</p> <p>The Electronic Transactions (Exemptions) Order, 2001</p>	<p>Electronic Communications (Jersey) Law 2000 (as amended, including under the Electronic Communications (Amendment of Law) (Jersey) Regulations 2019)</p>	<p>Electronic Transactions Law (2003 Revision)</p>	<p>Electronic Transactions Act, 2001</p> <p>Note that new legislation, the Electronic Transactions Act 2019 has been passed but is not yet in force. This table does not consider the provisions of the 2019 Act and will be updated once that Act does come into force.</p>
<b>CAN BOARD AND SHAREHOLDER MEETINGS BE HELD BY TELEPHONE OR OTHER ELECTRONIC METHODS (SUCH AS SKYPE OR ZOOM)?</b>	<p>Yes, in both cases – subject to any specific requirements or restrictions in a company's constitutional documents or other contracts which the company is party to (such as shareholders' agreements).</p> <p>In particular you should obtain specific advice from us where you are considering holding a shareholder meeting virtually as there are often particular restrictions and other practical considerations in holding these meetings which need to be considered carefully on a case by case basis</p> <p>Where a meeting is held virtually, it is deemed to have been held at the location in which the</p>	<p>Yes – same considerations as for Guernsey apply in Jersey.</p>	<p>Yes – same considerations as for Guernsey apply in Cayman.</p>	<p>Yes – same considerations as for Guernsey apply in the BVI.</p>

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	chairperson is present.			
<b>CAN BOARD AND SHAREHOLDER DECISIONS BE TAKEN BY WAY OF WRITTEN RESOLUTION?</b>	Yes, in both cases – subject to any specific requirements or restrictions in a company's constitutional documents or other contracts which the company is party to (such as shareholders' agreements).	Yes - same considerations as for Guernsey apply in Jersey.  For written shareholder resolutions in particular, there are also statutory provisions which need to be complied with regarding, for example, how these are to be circulated. We can advise you further on this process.	Yes - same considerations as for Guernsey apply in Cayman.	Yes - same considerations as for Guernsey apply in the BVI.
<b>DOES TAKING DECISIONS REMOTELY IMPACT UPON ECONOMIC SUBSTANCE TESTS?</b>	<p>Potentially, yes. We can advise on particular circumstances.</p> <p>The Guernsey tax authorities confirmed that a pragmatic approach to economic substance similar to Jersey would be taken in respect of the 2020 COVID-19 pandemic. This included meetings which relate to core income generating activities.</p> <p>The Guernsey guidance however recommended taking certain practical steps, including formally noting changes made to normal operation necessary</p>	<p>Potentially, yes. We can advise on particular circumstances.</p> <p>Revenue Jersey confirmed in respect of the 2020 COVID-19 pandemic that companies would not fail the economic substance test where operating practices have to be adjusted to compensate for the pandemic, for example, where directors cannot travel to Jersey because they are self-isolating.</p> <p>Any adjustments must be only to the extent required to mitigate the threats from the pandemic. Therefore, we would recommend implementing the same practical steps set out for</p>	<p>Potentially, yes. We can advise on particular circumstances.</p> <p>The Department for International Tax Cooperation issued guidance in respect of the 2020 COVID-19 pandemic that, for the purpose of the "directed and managed" test, it would "<i>take into consideration</i>" the circumstances in which virtual meetings have been held, noting that the pandemic may impact travel arrangements. This however is to be on a case-by-case basis and the guidance is unclear whether any leeway will be given for core income generating activity.</p>	<p>Potentially, yes. We can advise on particular circumstances.</p> <p>The BVI International Tax Authority issued guidance in respect of the 2020 COVID-19 pandemic that it also intended to adopt a reasonable and practical approach to economic substance compliance so that they would not be prejudiced.</p> <p>The BVI guidance provides measures that affected businesses need to consider in that situation, including where possible appointing alternate directors in the BVI and retaining supporting</p>

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	<p>as a result of the pandemic and appointment of alternate directors.</p> <p>For further information, click <a href="#">here</a>.</p>	<p>Guernsey.</p> <p>For further information, click <a href="#">here</a>.</p>	<p>For further information, click <a href="#">here</a>.</p> <p>We are able to guide you through practical considerations of what you need to think about in this situation. Please feel free to reach out to your usual Collas Crill contact.</p>	<p>evidence on the reasons why meetings were unable to take place in the BVI as a result of the pandemic.</p> <p>Importantly, the BVI guidance states that board meetings relating to core income generating activity must still be held in the BVI.</p> <p>For further information, click <a href="#">here</a>.</p>
<b>CAN LOCAL LAW GOVERNED DOCUMENTS BE SIGNED ELECTRONICALLY?</b>	<p>There is statutory provision for electronic signatures but, in all cases, care is needed as there may be:</p> <ul style="list-style-type: none"> <li>• restrictions in the company's constitutional documents (where a corporate entity is signing);</li> <li>• restrictions noted in the actual document to be executed; and</li> <li>• certain statutory</li> </ul>	<p>The same considerations apply as for Guernsey.</p>	<p>The same considerations apply as for Guernsey.</p>	<p>The same considerations apply as for Guernsey.</p>

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	exceptions.			
<b>ARE THERE ANY SPECIFIC REQUIREMENTS FOR HOW AN ELECTRONIC SIGNATURE IS TO BE APPLIED?</b>	<p>Not generally as a matter of legislation, subject to:</p> <ul style="list-style-type: none"> <li>any restrictions in the company's constitutional documents (where a corporate entity is signing); and</li> <li>any restrictions noted in the actual document to be executed.</li> </ul> <p>Based on our experience of different methods of electronic signature, we can advise you on the most appropriate method of electronic signature for the documents which you are looking to enter.</p>	<p>As well as the same considerations for Guernsey, there is a requirement that a method of electronic signature is used <i>"to identify the person and to indicate their approval of the information provided"</i>.</p> <p>There is no statutory guidance as to what that means in practice and this will need to be considered on a case-by-case basis.</p> <p>There are statutory provisions which set out the circumstances in which electronic information will be considered from the originator and when you can assume that is the case. Care should be taken to ensure that the method of electronic signature falls within those provisions.</p> <p>Based on our experience of different methods of electronic signature, we can advise you on the most appropriate method of electronic signature for the documents which you are looking to enter.</p>	<p>As well as the same considerations for Guernsey, there is a requirement in Cayman that the electronic signature is <i>"as reliable as was appropriate for the purpose for which the electronic record was generated or communicated, in all the circumstances, including any relevant agreements"</i></p> <p>There is no definition of what meets this requirement in all cases, but there is a presumption that this test is met in certain circumstances:</p> <ul style="list-style-type: none"> <li>the means of creating the electronic signature is linked to the signatory and no other person;</li> <li>the means of creating the electronic signature was under the control of the signatory and no other person;</li> <li>any alteration to the electronic signature after the time of signing is</li> </ul>	<p>As well as the same considerations for Guernsey, the same additional requirements for both Jersey and Cayman apply in the BVI.</p> <p>The same presumption on reliability as Cayman applies, where the four criteria are met.</p>

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			<p>detectable; and</p> <ul style="list-style-type: none"> <li>where the purposes of the legal requirement for a signature is to provide assurance regarding the integrity of the information to which it relates, any alteration made to the information after signing is detectable.</li> </ul> <p>This will need to be considered on a case-by-case basis and the parties can agree the method to be used.</p> <p>Based on our experience of different methods of electronic signature, we can advise you on the most appropriate method of electronic signature for the documents which you are looking to enter.</p>	
<b>IF SO, ARE THERE ANY DOCUMENTS WHICH CANNOT BE SIGNED ELECTRONICALLY?</b>	<p>You must check whether there is any restriction in the document itself which prohibits or restricts how a document may be signed.</p> <p>In the absence of any other restrictions, there are certain</p>	<p>Particular care needs to be taken before applying an electronic signature in connection with anything to be filed with a Jersey court, particularly where that relates to land and wills.</p>	<p>Particular care needs to be taken before applying an electronic signature in connection with a will or other testamentary instrument.</p> <p>Otherwise, the same considerations set out for Guernsey in respect of</p>	<p>Particular care needs to be taken before applying an electronic signature in connection with a BVI law document that:</p> <ul style="list-style-type: none"> <li>is required to be signed as a</li> </ul>

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	<p>statutory exceptions where particular care needs to be taken before using an electronic signature in certain circumstances, including, for example, in respect of a Guernsey law document that is or purports to:</p> <ul style="list-style-type: none"> <li>convey real property or transfer any interest in real property;</li> <li>lease real property;</li> <li>create, execute, vary, rectify or revoke a will, codicil or any testamentary instrument; or</li> <li>create, execute, vary, rectify, revoke or enforce an indenture, declaration of trust, power of attorney or any document required to be sealed.</li> </ul> <p>We also recommend that you seek advice from us where it is</p>	<p>Otherwise, the same considerations set out for Guernsey in respect of contractual restrictions and non-Jersey law documents will apply in Jersey.</p> <p>Please reach out to your usual Collas Crill contact who will be able to advise more fully on whether an electronic signature will be appropriate for any particular document.</p>	<p>contractual restrictions, court filings and non-Cayman law documents will apply in Cayman.</p> <p>Please reach out to your usual Collas Crill contact who will be able to advise more fully on whether an electronic signature will be appropriate for any particular document.</p>	<p>deed;</p> <ul style="list-style-type: none"> <li>deals with the creation, execution or revocation of a will or testamentary instrument; and</li> <li>deals with the conveyance of real property or the transfer of any interest in real property.</li> </ul> <p>Otherwise, the same considerations set out for Guernsey in respect of contractual restrictions, court filings and non-BVI law documents will apply in the BVI.</p> <p>Please reach out to your usual Collas Crill contact who will be able to advise more fully on whether an electronic signature will be appropriate for any particular document.</p>

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	<p>intended that any documents are filed with a Guernsey court using an electronic signature.</p> <p>Please reach out to your usual Collas Crill contact who will be able to advise more fully on whether an electronic signature will be appropriate for any particular document.</p> <p>Where you are executing a non-Guernsey law document by electronic means, you will need to take advice in that jurisdiction as to whether electronic signatures are acceptable for that document.</p>			
<b>IS CONSENT OF ANY PARTY NEEDED TO USE ELECTRONIC SIGNATURES? IS THERE ANY PRESCRIBED METHOD WHICH MUST BE USED OR CRITERIA WHICH MUST BE SATISFIED?</b>	<p>Yes, no party may be compelled to accept a document in electronic form or executed by electronic means, so establishing the consent of all parties to an electronically signed document is important.</p> <p>There is no prescribed method or criteria to meet, but please speak to us for advice on the best means of establishing that</p>	<p>Where an electronically signed document is required to be submitted to a States of Jersey authority:</p> <ul style="list-style-type: none"> <li>You must first have that authority's consent to receipt of an electronically signed version.</li> <li>You must also comply with any technology requirements that authority may have as to</li> </ul>	<p>Yes – where information is required to be delivered or sent to a person, the format of the electronic record and how it is delivered must be acceptable to the parties.</p> <p>There is no prescribed method to establish this acceptance and will depend on the particular circumstances, but please speak to us for advice on the best means of establishing this for your</p>	<p>Yes – subject to the same considerations as for Guernsey.</p>

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	<p>consent for your transaction.</p> <p>In all cases, the terms of the particular document need to be checked carefully to determine whether there are any particular criteria set out in that document.</p>	<p>the form of that electronic signature.</p> <p>In all cases, the terms of the particular document need to be checked carefully to determine whether there are any particular criteria set out in that document.</p>	<p>transaction.</p> <p>Where an electronically signed document is required to be submitted to a Cayman Islands ministry or portfolio, you must first have that ministry or portfolio's consent to receipt of an electronically signed version.</p> <p>A ministry or portfolio is not otherwise <i>compelled</i> to process electronic records unless it publishes a notice in the Gazette that electronic records will be processed.</p> <p>You must also comply with any technology requirements the ministry or portfolio may have as to the form of that electronic signature.</p> <p>In all cases, the terms of the particular document need to be checked carefully to determine whether there are any particular criteria set out in that document.</p>	

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<b>WHERE A DOCUMENT MUST BE WITNESSED OR ATTESTED, CAN THIS BE DONE REMOTELY?</b>	<p>This is a developing area and particular care needs to be taken and you should reach out to your usual Collas Crill contact before remotely witnessing signatures to a Guernsey law document, i.e. where the witness is not physically present with the person who signed the document.</p> <p>Where you are executing a non-Guernsey law document by electronic means, you will need to take advice in the relevant foreign jurisdiction as to whether electronic signatures are acceptable for that document.</p>	<p>The same considerations as for Guernsey will apply in respect of Jersey and non-Jersey law governed documents.</p>	<p>The same considerations as for Guernsey will apply in respect of Cayman and non-Cayman law governed documents.</p>	<p>The same considerations as for Guernsey will apply in respect of BVI and non-BVI law governed documents.</p>
<b>DOES THE COMPANIES REGISTRY OR EQUIVALENT ACCEPT DOCUMENTS WHICH HAVE BEEN SIGNED ELECTRONICALLY?</b>	<p>Yes.</p> <p>Most submissions and applications can be made with the Guernsey Company Registry electronically using their online portal. The relevant electronic signature for these submissions is made by clicking the "submit" button.</p>	<p>Yes.</p> <p>A large number of submissions and applications can be made with the Companies Registry electronically using their online portal.</p> <p>Where certain documents are required by law to be filed with the Registry (e.g. certain resolutions), these can generally be provided in</p>	<p>Yes.</p> <p>A large number of submissions and applications can be made with the Cayman Registrar of Companies (<b>Registrar</b>) electronically using their online portal. The relevant electronic signature for these submissions is made by clicking the "submit" button.</p>	<p>Yes.</p> <p>A large number of submissions and applications can be made with the BVI Registry electronically using their online portal. The relevant electronic signature for these submissions is made by clicking the "submit" button.</p> <p>We are seeking clarification with</p>

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	Where certain documents are required by law to be filed with the Registry (e.g. certain resolutions), these can be provided in electronic form (e.g. a PDF) and executed by electronic means.	electronic form (e.g. a PDF) and executed by electronic means.  Where certain submissions usually require a wet ink signature, and this is not currently possible as a result of the 2020 COVID-19 pandemic, the Registry will accept electronically signed documents, as set out below.	Where certain submissions usually require a wet ink signature, and this is not currently possible, the Registrar and the Cayman Islands Monetary Authority (CIMA) will accept electronically signed documents, as set out below.	the Registry as to the acceptance of submissions executed with electronic signatures and will update this note once that guidance has been received.
<b>IF SO, DO THEY HAVE ANY SPECIFIC REQUIREMENTS?</b>	For documents that would ordinarily need to be submitted with wet-ink signatures, the GFSC has issued the following guidance on how to execute applications that would normally require a wet ink signature: <ul style="list-style-type: none"> <li>If a printer is available the paperwork should be printed, the signature box signed, and the individual representing the licensee/applicant should take a photo of the application form and email it to Authorisations@gfsc.gg along with a pdf version of the unsigned</li> </ul>	For documents that would ordinarily be submitted with wet ink signatures, and this is not currently possible as a result of the 2020 COVID-19 pandemic, the Registry requires either: (1) an affixed digital/scanned signature(s) or (2) an accompanying email confirming that the signatory agreed to the signing of the document.	The Registrar has announced that it will accept affidavits and other documents that have been notarised or certified online or using audio or video technology. CIMA has announced the same in respect of regulatory filings, with notarisation or certification being made using DocuSign or using audio or video technology.	None at the time of writing.

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	<p>application form.</p> <ul style="list-style-type: none"> <li>Where a printer is unavailable the licensee/applicant should copy out the signature box statement including any relevant declarations and the applicant's name on a blank piece of paper, sign and date the statement then photograph and email in to the Commission as above together with a pdf copy of the application form without the signature box being completed.</li> </ul>			

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<b>ARE THERE ANY OTHER RELEVANT CONSIDERATION IN RELATION TO THE EXECUTION OF DOCUMENTS BY ELECTRONIC SIGNATURE IN YOUR JURISDICTION (INCLUDING DOCUMENTS THAT STILL NEED TO BE FILED WITH "WET INK" SIGNATURES AT A REGULATOR ETC.)?</b>	<p><i>Tax:</i> Tax advice should be obtained to determine whether electronic signatures and/or virtual board meetings could lead to any onshore or other tax impact.</p> <p><i>Counterparty requirements:</i> In all circumstances, ascertain at an early stage whether counterparties will accept the proposed method of electronic signature. Some banks, for example, may have particular requirements from an internal perspective.</p> <p><i>Internal requirements</i> – check whether your own corporate governance requirements need to be amended to facilitate the use of virtual meetings and electronic signatures. We are happy to conduct an audit and advise you of any necessary changes.</p>	Same considerations as for Guernsey apply.	<p>Same considerations as for Guernsey apply. In addition:</p> <ul style="list-style-type: none"> <li>• The Cayman Court is at present accepting electronic filing of documents but is still working on implementing steps for use of electronic signatures.</li> <li>• The Cayman Land Registry still requires documents to be filed with "wet ink" signatures within two weeks of registration.</li> </ul>	Same considerations as for Guernsey apply.

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