VOISIN LAW

Electronic Signatures – Some Practical Considerations | 1

With smartphones, tablets and various forms of technology now a normal part of our lives, it's no surprise that lawyers are constantly asked whether documents can be executed electronically.

Under Jersey Law, electronic signatures have actually been permitted by statute as far back as 2001, with electronic signatures being 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."*

Although, in general, the use of electronic signatures for the execution of a simple contract should not cause problems, it is important to note that electronic signatures can take a number of forms and there are various practical considerations to take into account.

Electronic signatures can now take a number of different forms, including:

1. a person typing their name into a contract or into an email containing the terms of a contract;
2. a person electronically pasting their signature into an electronic version of the contract next to the relevant party's signature block;
3. a person accessing a contract through a web-based e-signature platform and clicking to have their name in a typed or handwriting font automatically inserted into the contract next to the relevant party's signature block; and
4. a person using a finger, a light pen or stylus and/or touchscreen to write their name electronically in the contract.

Practical Considerations

When considering executing a document by electronic signature, the following points are worth noting:

1. **Is the document governed by a law other than Jersey law?** If so, consideration should be given as to whether the relevant legal system recognises e-signatures as a valid form of execution.
2. **Is it certain that the e-signature actually comes from the person purporting to sign?** Whether the person has accessed the document through a specific email address or used an e-signature platform with a unique login might be relevant.
3. **Will the application simply insert a scan of the signature in the document, or will the signature that is provided be encrypted in some way?** The former would be less certain than a wet-ink signature, whereas an encrypted signature, if backed by a certificate from a qualified provider, will be viewed as more certain.
4. **Does the person signing the document have a right to do so?** A company's constitutional documents may prohibit the use of electronic signatures and the articles of association may therefore need to be amended in order to permit their use.
5. **Where will the document be filed?** Specific organisations, such as the Jersey Company Registry in Jersey or HMRC and Land Registry in England and Wales may require certain documents to be filed in hard-copy form with a wet-ink signature. In addition, if the document needs to be notarised or apostilled, a wet ink copy will need to be available.
6. **Do all parties need to execute the document in the same manner?** If one or more parties to a document (including any witnesses) wish to sign using electronic signature, while others would

prefer to use a wet-ink signature, the document can be signed using a combination of different methods, as long as each party uses a valid signature method.

Time for the Law to be modernised?

The issue of whether electronic signatures are valid is of course not unique to Jersey, with digitalisation demanding new laws and guidance in many jurisdictions.

For example, in the EU a new regulation (Regulation (EU) No 910/2014) came into effect on 1 July 2016 setting out an EU-wide framework for electronic signatures and confirming that all forms of electronic signature are admissible in any EU Member State court for evidential purpose and that certain types of electronic signatures will have the same legal effect as if the documents were signed by hand.

In Jersey, by contrast, the section dealing with electronic signatures in the Law is not extensive and, given the rapid advances in technology that have occurred since 2000 (back then advanced touchscreen smartphones did not exist), it is indeed inevitable that consideration will soon need to be given in Jersey as to whether additional legislation is now required to address these technological developments.