

EFFECTING LEGAL ARRANGEMENTS AND  
EXECUTING DOCUMENTS BY ELECTRONIC MEANS  
– BRITISH VIRGIN ISLANDS

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
<b>COURT DOCUMENTS</b>		
<b>General</b>	Do not need to be filed as originals containing wet ink signatures but can be copies of originals.	Copies permitted on E-Litigation Portal where documents are filed online.
<b>AFFIDAVITS</b>		
<b>For Court Proceedings</b>	Usually sworn before a notary public or commissioner for oaths. The Covid-19 Practice Direction made allowances for parties to file witness statements (which need not be sworn) with an undertaking that an affidavit be provided to the Court as soon as logistically possible thereafter.	The Covid-19 Practice Direction also made allowances for electronic signatures on these documents.
<b>AGREEMENTS AND CONTRACTS</b>		
<b>Individual</b>	Agreements and contracts are typically signed by an individual and witnessed. Witnesses are not required for standard agreements and contracts, but are typically used as an evidentiary backstop, so that neither party can claim that they did not sign.	Electronic signatures permitted where signed by the individual. Where witnessed, specific circumstances to be considered.
<b>Company</b>	Under Section 103 of the BVI Business Companies Act, 2004 (as amended) ( <b>BCA</b> ), a contract may be entered into by a company as follows: <ul style="list-style-type: none"> <li>(a) in writing under the common seal of the company, and may be varied or discharged in the same manner;</li> <li>(b) in writing and signed by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner; and</li> <li>(c) orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner.</li> <li>(d) The memorandum and articles of association of a BVI company should also be considered.</li> </ul>	Electronic signatures permitted.
<b>Limited Partnership</b>	The General Partner signs for the Limited Partnership, so the formalities will depend on whether the GP is itself a company, partnership or individual.  See s. 51 of the Limited Partnership Act, 2017:	As above, with the signatory following the execution rules applicable to the type of GP (i.e. whether the GP is an individual, corporate entity, partnership).

## USUAL EXECUTION FORMALITIES

## ELECTRONIC MEANS

- (1) "Notwithstanding any provision of the Registration and Records Act, all deeds and other instruments relating to:
  - (a) transfers of an asset to or by a limited partnership;
  - (b) transactions in respect of the partnership interests, debt obligations or other securities in or of a limited partnership; and
  - (c) other transactions relating to the business of a limited partnership, are exempt from the provisions of that Act.
- (2) Subsection (3) applies to any instrument, including:
  - (a) a limited partnership agreement;
  - (b) an agreement under which a person agrees to make a commitment or contribution to a limited partnership as a partner; and
  - (c) an agreement, contract, deed, instrument under seal or other document entered into by or on behalf of
    - (i) the limited partnership; or
    - (ii) a general partner, for himself or herself in the case of the partnership agreement, or otherwise on behalf of the limited partnership.
- (3) Where an instrument referred to in subsection (3) is executed in conformity with this Act or any other enactment applicable to the execution of the instrument, it is validly executed by the parties where it is executed in any manner contemplated by the parties, including, without limitation:
  - (a) where the complete instrument is executed; or
  - (b) where any signature or execution page to the instrument is executed, whether or not the instrument is at the time in its final form, and which is attached by, or on behalf of, the relevant party to the instrument, or otherwise with the relevant party's express or implied authority to the instrument."

## DEEDS

### Individual

See Section 2 of the Property (Miscellaneous Provisions) Act, 2003:

..."an instrument is validly executed by an individual as a deed or an instrument under seal if it satisfies the requirements of this section.

- (2) A deed or instrument under seal satisfies the requirements of this section if:
  - (a) it is signed in accordance with the provisions of subsection (3); and
  - (b) it is either
    - (i) sealed; or
    - (ii) expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed.
- (3) For the purpose of this section, a deed or instrument is signed if it is signed:
  - (a) by the individual in the presence of a witness who attests his signature; or
  - (b) at the direction of the individual and in his presence and the presence of two witnesses who each sign it and it appears from the face of such deed or instrument that they have done so at his direction.
- (4) In subsection (2) and (3)(a), "sign", in relation to an instrument, includes an individual making his mark on the instrument, and "signature" shall be construed accordingly...."

Electronic signatures to a BVI law governed deed not permitted pursuant to Section 3(c) of the ESA.

### Company

See Section 103(4) of the BCA:

Electronic signatures to a BVI law governed deed or foreign law governed deed by a BVI

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
<b>(no seal)</b>	<p>"...An instrument is validly executed by a company as a deed or an instrument under seal if it is either:</p> <p>(a) sealed with the common seal of the company and witnessed by a director of the company or such other person who is authorised by the memorandum and articles to witness the application of the company's seal; or...</p> <p>(4A) An instrument under seal or a deed to be governed by the laws of the Virgin Islands is validly executed by a foreign company or other foreign entity if the instrument under seal or deed is executed in a manner permitted by the laws of the territory in which the foreign company or other foreign entity is incorporated, registered or organised.</p> <p>(4B) The execution of an instrument under seal or a deed in accordance with subsection (4A) meets the requirements of the laws of the Virgin Islands and shall accordingly be treated as an instrument."</p>	<p>company not permitted pursuant to Section 3(c) of the ESA.</p> <p>Pursuant to section 103(4C) of the BCA, an instrument under seal or deed is validly executed where the complete instrument or deed is executed or where any signature or execution page of the instrument under seal or deed is executed separately then is attached to (physically or electronically).</p>
<b>Company (with seal)</b>	<p>See Section 103(4) of the BCA:</p> <p>"...An instrument is validly executed by a company as a deed or an instrument under seal if it is either:...</p> <p>(b) it is expressed to be, or is expressed to be executed as, or otherwise makes clear on its face that it is intended to be, a deed and it is signed by a director or by a person acting under the express or implied authority of the company.</p> <p>(4A) An instrument under seal or a deed to be governed by the laws of the Virgin Islands is validly executed by a foreign company or other foreign entity if the instrument under seal or deed is executed in a manner permitted by the laws of the territory in which the foreign company or other foreign entity is incorporated, registered or organised.</p> <p>(4B) The execution of an instrument under seal or a deed in accordance with subsection (4A) meets the requirements of the laws of the Virgin Islands and shall accordingly be treated as an instrument."</p>	<p>Electronic signatures to a BVI law governed deed or foreign law governed deed by a BVI incorporated company not permitted pursuant to Section 3(c) of the ESA.</p> <p>Pursuant to section 103(4C) of the BCA, an instrument under seal or deed is validly executed where the complete instrument or deed is executed or where any signature or execution page of the instrument under seal or deed is executed separately then is attached to (physically or electronically).</p>
<b>FILINGS AND RETURNS</b>		
<b>FSC</b>	Submitted via email by the authorised representative.	Submitted via email by the authorised representative.
<b>BVI Companies Registrar</b>	Filings are usually done online (but depends on applicable transaction). Particular transactions may need to be submitted manually.	Filings are usually done online (but depends on applicable transaction). Particular transactions may need to be submitted manually.
<b>LAND REGISTRY DOCUMENTS</b>		
<b>All</b>	Land Registry documents are filed as originals and usually in triplet, with wet-ink signatures.	There has been no update from the Land Registry department on procedures that will allow electronic copies of documents to be filed. Provisions have been made however, for the request of certified copies of documents held on the register of lands to be made electronically via email.

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
<b>NOTARIAL ACTS</b>		
<b>All</b>	Notarial acts must be performed by a notary public and requires the notary's signature and affixing of the seal and stamp where required. When notarising a person's signature the normal requirement is that the person must sign the document in front of the notary and (if they are not known personally to the notary) they must have proven their own identity to the notary. Where a notary is required to certify a true copy of a document, they will normally need to see the original document. Best practice is for the notary to physically make the copy themselves, thereby avoiding any doubt as to the genuineness of a copy. A notary will not certify a copy of another copy.	These matters are regulated by the Commissioners for Oaths and Notaries Public Act 2007. There has been no change in these regulations which would allow a notary public to carry out virtually a notarial act, such as witnessing the execution of a document by a "remotely located individual".
<b>POWERS OF ATTORNEY</b>		
<b>Individual</b>	See Section 54(1) of the Conveyancing and Law of Property: "The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof." Powers of attorney are generally executed by way of deed and therefore Section 2 of the Property (Miscellaneous Provisions) Act, 2003 would apply.	Electronic signatures permitted where not executed by Deed (Section 3(c) of the ESA).
<b>Company</b>	Pursuant to Section 106(3) of the BCA, subject to the memorandum and articles, a company may, by an instrument in writing to appoint a person as its attorney. Section 106(3) of the BCA requires an instrument appointing an attorney under section 106(1) of the BCA to either be executed as a deed or signed by a person acting under the express or implied authority of the BVI company.	Electronic signatures permitted where not executed by deed (Section 3(c) of the ESA).
<b>PROXY FORMS, APPOINTMENTS AND AUTHORISATIONS</b>		
<b>All</b>	Proxies, appointments, consents and authorisations are normally signed by the director or shareholder (as applicable). The memorandum and articles of association may impose additional formalities.	Electronic signatures permitted.
<b>SHARE TRANSFER FORMS</b>		
<b>All</b>	Section 54(1) of the BCA requires a share transfer form to be signed by the transferee and section 54(2) of the BCA requires a share transfer form to be signed by the transferee if registration as a holder of the share imposes a liability to the company on the transferee. The memorandum and articles of association may impose additional requirements.	Electronic signatures permitted where not executed by way of deed.

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
VIRTUAL CLOSINGS, GENERALLY		
<b>All</b>	The signing of all documents must meet the requirements for execution unique to the documents, as set out above.	It is important to agree the procedures with all parties to the transaction beforehand and, if relevant, consult with local counsel in each party's jurisdiction.
WILLS AND TESTAMENTARY INSTRUMENTS		
<b>All</b>	A BVI law governed will must be executed in writing, signed at the foot of the document by the testator and witnessed by two witnesses who formally attest the will in writing in the presence of the testator.	The requirements for a valid BVI law governed will are provided for under the Wills Act, Cap 81. There has been no change to this legislation to allow wills to be executed electronically and pursuant to section 3(a) of the ESA, wills and testamentary instruments e-signatures may not be used.