

EFFECTING LEGAL ARRANGEMENTS AND
EXECUTING DOCUMENTS BY ELECTRONIC MEANS
- BERMUDA

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
COURT DOCUMENTS		
General	Court documents are usually filed as originals, with wet-in signatures.	Circular 15 of 2020 - Transitional Re-opening of the Courts to Full Services states that Supreme Court Registries are open for general filings from Mondays to Fridays from 8:30am to 12:45pm.
AFFIDAVITS		
For Court Proceedings	<p>In normal circumstances, affidavits for use in court proceedings are sworn in the presence of a notary public or commissioner for oaths.</p> <p>(i) Commissioners for Oaths and Notaries Public Act 1972 (ii) Commissioners for Oaths and Notaries Public Rules 1973</p>	<p>There is the ability of the Court to accept "irregular" affidavits, for example those that are unsworn, on the basis that the party undertake to file a sworn copy as soon as they are able.</p> <p>Rules of the Supreme Court 1985 (RSC)</p> <p>RSC 41/4- Use of defective affidavit An affidavit may with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.</p>
For Other Purposes	In normal circumstances, affidavits filed in support of statutory procedures that are not court-specific are sworn in the presence of a notary public or commissioner for oaths.	
AGREEMENTS AND CONTRACTS		
Individual	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.	<p>Electronic signatures permitted. Because witnessing is not strictly necessary, there is some freedom to use electronic means for witnessing. Viewing the act of signing over a contemporaneous internet video application would likely satisfy a court in the event of a dispute. It may be prudent to record the signature and witnessing session for future validation.</p> <p>The Electronic Transactions Act 1999 (ETA 1999) provides that electronic signatures are valid under Bermuda law. There are three main aspects of the ETA 1999 that need to be complied with in order for the electronic signature to be valid. Firstly, any person executing a document must be verified. Secondly, there need to be evidence of intent to execute. Thirdly, the document executed should be in a form that is both accessible and retainable by all parties to it during the execution process.</p>

	USUAL EXECUTION FORMALITIES	ELECTRONIC MEANS
<p>Company</p>	<p>Section 23 of the Companies Act 1981.</p> <ol style="list-style-type: none"> (1) A company may, in writing, authorise any person, either generally or in respect of any specified matter, as its agent, to sign or execute deeds, instruments or other documents on its behalf in any place inside or outside Bermuda. (2) A deed, instrument or document signed or executed by an authorised agent on behalf of the company binds the company. (3) A company may, but need not, have a common seal and one or more duplicate common seals for use in any place inside or outside Bermuda. (4) If a common seal or duplicate common seal is to be affixed to a deed, instrument or document, the affixing of the seal shall be attested to by the signature of at least one person who is a director or the secretary of the company or a person expressly authorised to sign, or in such other manner as the bye-laws of the company may provide. (5) A deed, instrument or document to which the common seal, or duplicate common seal, of the company is duly affixed binds the company. <p>NB: Execution formalities may also be dictated by the bye-laws.</p>	<p>As above, with the signatory being any person expressly or impliedly authorised to sign on behalf of the company.</p>
<p>Partnership</p>	<p>Partnership Act 1902.</p> <p>Section 6 - Partners are bound by acts of firm;</p> <p>An act or instrument relating to the business of the firm and done or executed in the firm-name or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners:</p> <p>Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.</p>	<p>As above, with the signatory being any person authorised to sign on behalf of the partnership.</p>
<p>LLC</p>	<p>Limited Liability Company Act 2016.</p> <p>Section 69 - Form of contracts:</p> <ol style="list-style-type: none"> (1) Contracts on behalf of a limited liability company may be made as follows; <ol style="list-style-type: none"> a) a contract which if made between two or more private persons would by law be required to be under seal, may be made on behalf of the limited liability company in writing; <ol style="list-style-type: none"> i) signed by any person acting under the express or implied authority of the limited liability company; ii) executed under the common seal of the limited liability company; or iii) signed or executed in such other manner as the LLC agreement may provide. b) a contract which if made between two or more private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the limited liability company in writing signed by any person acting under its authority, express or implied; c) a contract which if made between two or more private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the limited liability company by any person acting under its authority, express or implied. (2) A contract made according to this section shall be effectual in law, and shall bind the limited liability company and its successors and all other parties thereto. (3) A contract made according to this section may be varied or discharged in the same 	<p>As for companies, with the signatory being any person expressly or impliedly authorised to sign on behalf of the LLC.</p>

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
	<p>manner in which it is authorised by this section to be made.</p> <p>(4) Where a contract purports to be made by a limited liability company or by a person as agent for a limited liability company, at a time when the limited liability company has not yet been formed, then, subject to any agreement to the contrary, the contract shall have effect as a contract entered into by the person purporting to act for the limited liability company or as agent for the limited liability company and he shall be personally liable on the contract accordingly.</p> <p>(5) Any contract purported to be made in the manner set out in subsection (4) may subsequently be unilaterally adopted by the limited liability company and the limited liability company shall thereupon become a party thereto to the same extent as if the contract had been made after the formation of the limited liability company and in substitution for and discharge of the agent or person purporting to act on its behalf.</p> <p>Section 70 - Execution of documents:</p> <p>(1) A limited liability company may, in writing, authorise any person, either generally or in respect of any specified matter, as its agent, to sign or execute deeds, instruments or other documents on its behalf in any place inside or outside Bermuda.</p> <p>(2) A deed, instrument or document signed or executed by an authorised person on behalf of the limited liability company binds the limited liability company.</p> <p>(3) A limited liability company may, but need not, have a common seal and one or more duplicate common seals for use in any place inside or outside Bermuda.</p> <p>(4) If a common seal or duplicate common seal is to be affixed to a deed, instrument or document, the affixing of the seal shall be attested to by the signature of at least one authorised person, or in such other manner as the LLC agreement may provide.</p> <p>(5) A deed, instrument or document to which the common seal, or duplicate common seal, of the limited liability company is duly affixed binds the limited liability company.</p> <p>NB: Execution formalities may also be dictated by the LLC Agreement.</p>	
DEEDS		
All	<p>Conveyancing Act 1983 sections 6 and 6A.</p> <p>S.6(A) of the Conveyancing Act 1983 provides the formalities for the valid execution of deeds under Bermuda law. These formalities differ depending on whether the signing party is an individual or a body corporate/ partnership.</p> <p>Deeds must be used for a handful of transactions such as those including the execution of trusts, deed polls and conveyances of land.</p>	
Individual	<p>In addition to the 'clear on the face of it' requirement, deeds signed by individuals must be witnessed under Bermuda law. Such prevents the use of e-signatures for deeds. The deed must then be delivered (i.e. by email/ post) by the signing person or persons authorised to do so on his behalf.</p>	<p>Due to recent restrictions on working in offices and social distancing requirements it can be difficult to source a witness when required for the execution of a deed. There is an argument that with recent developments in technology it is possible to be present when connected via live video link, whereby the witness has sight of the execution block of the deed. However, without any statute, regulations, case law, or Bar Council guidance to this affect, a more conservative approach would be recommended where possible.</p>
Company	<p>Assuming the person signing is duly authorised to do so on behalf of the company, the only requirements are that the deed must be 'clear on the face of it' that it is a deed and be executed as a deed. This simply means the document must specify it is a deed and the</p>	<p>Electronic signatures permitted. Because witnessing is not strictly necessary, there is some freedom to use electronic means for witnessing. Viewing the act of signing over a contemporaneous internet video application would likely satisfy a court in the</p>

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
	signing of the document must be referred to therein as execution of the deed.	<p>event of a dispute. It may be prudent to record the signature and witnessing session for future validation.</p> <p>The Electronic Transactions Act 1999 (ETA 1999) provides that electronic signatures are valid under Bermuda law. There are three main aspects of the ETA 1999 that need to be complied with in order for the electronic signature to be valid. Firstly, any person executing a document must be verified. Secondly, there needs to be evidence of intent to execute. Thirdly, the document executed should be in a form that is both accessible and retainable by all parties to it during the execution process.</p>
FILINGS AND RETURNS		
BMA	N/A	All correspondence and application requests must be submitted electronically. The BMA is unable to accept payment via checks at this time and have requested all payments be made via wire transfer.
Register of Companies	N/A	<p>As of March 18 2020 the Registrar of Companies (RoC) has been facilitating the submission of electronic applications.</p> <p>All general registrations and application submissions should be sent via email.</p> <p>Requests for name reservations should be submitted as normal via the RoC website.</p> <p>Physical Company Searches of hard copy files are available by appointment only. Search requests can also be submitted via email using a form created by the RoC.</p> <p>Requests for certificates of compliance should be submitted to the RoC electronically. If the entity is in compliance, the RoC will issue an electronic certificate via email.</p> <p>All payments to the RoC should be made via wire transfer.</p>
Litigation Searches	N/A	Circular 15 of 2020 - Transitional Re-opening of the Courts to Full Services states that searches of the Cause Books are by appointment only. Searches are permitted for a period of one hour per search request.
LAND REGISTRY DEEDS AND REGISTERED DOCUMENTS		
All	<p>The Land Title and Registry Office (LTRO) is responsible for registering land and property ownership in Bermuda.</p> <p>(i) Land Title Registration Act 2011. (ii) Land Title Registration Rules 2018.</p>	<p>PDF signatures are proving acceptable in situations that do not involve a transfer of real property.</p> <p>Real property transfers can be set up with Sale and Purchase Agreements signed by PDF. Unfortunately the Conveyancing Act and Land Registration Act require wet signatures, additionally these documents cannot be stamped or lodged for land registration.</p> <p>If a bank mortgage is not involved a real property transfer can be arranged using undertakings between attorneys and non-release of funds until wet signatures are available.</p> <p>The Land Registration Act does contemplate e-signatures but such provisions have not yet been implemented by the Bermuda Government.</p>

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
NOTARIAL ACTS		
All	<p>Notarial acts must be performed by a notary public and typically require the notary's signature and affixing of the seal.</p> <p>(i) Commissioners for Oaths and Notaries Public Act 1972. (ii) Commissioners for Oaths and Notaries Rules 1973.</p>	Bermuda has not released any legislation or policy directions regarding procedures to carry out a virtual notarial act.
POWERS OF ATTORNEY		
Individual (execution)	<p>Powers of Attorney Act 1944. Section 2 - Execution of instruments under power of attorney:</p> <p>(1) Subsections (2) and (3) shall have effect and shall be deemed always to have had effect with respect to the execution or doing of any assurance, instrument or thing under a power of attorney.</p> <p>(2) A person who is 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 under 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 therefor.</p>	
Company	<p>Powers of Attorney Act 1944 Section 2 - Execution of instruments under power of attorney:</p> <p>(1) Subsections (2) and (3) shall have effect and shall be deemed always to have had effect with respect to the execution or doing of any assurance, instrument or thing under a power of attorney.</p> <p>(3) Where any such person as aforesaid is a body corporate, subsection (2) shall be construed as if the reference to the mode (permitted by subsection (2)) of executing or doing any assurance, instrument or thing by the donee of the power of attorney included a reference to the authorised mode of executing or doing any assurance, instrument or thing by the body corporate, including the affixing of the seal of the body corporate (where sealing is required) and attestation.</p>	
PROXY FORMS, APPOINTMENTS AND AUTHORISATIONS		
Individual	Proxies, appointments, consents and authorisations can be signed by an individual.	Electronic Transactions Act 1999: By virtue of the ETA 1999, electronic signatures can be used.
Company	Proxies, appointments, consents and authorisations are, as a matter of best practice rather than statute, signed by the director or member (shareholder). The bye-laws may impose additional formalities.	Electronic Transactions Act 1999: By virtue of the ETA 1999, electronic signatures can be used but check the bye-laws regarding witnesses when being signed on behalf of a company.

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
SHARE TRANSFER FORMS		
All	Subject to the Bye-Laws of the Company, shares of the Company may be transferred by a written instrument signed by the transferor and, where any share is not fully-paid, the transferee. The share transfer form should be submitted to the Company together with the original share certificate, if any, to its registered office. The transfer of shares is effective when the name of the transferee is entered on the Register of Members.	Electronic Transactions Act 1999: By virtue of the ETA 1999, electronic signatures can be used for the Share transfer form.
VIRTUAL CLOSINGS, GENERALLY		
All	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		
All	Governed by the Wills Act 1988 Sections 7, 8 and 9.	<p>During this time of social distancing, there may be challenges or concerns around having your Will completed and executed. It can be prepared and sent to you by post or electronically for printing. The document should be signed by you in the presence of two independent adult witnesses who should not be your spouse, a beneficiary, or spouse of a beneficiary named in your Will.</p> <p>If it is necessary to execute the Will while you are self-isolating, then extreme care must be taken regarding witnesses. If you are merely social distancing, then the Will can be signed in the presence of two witnesses in the same room but six feet apart. After executing the Will, you can then pass or slide it to your first witness to sign and they in turn can pass or slide it to the second witness to do the same. Each of you should have a different pen or wear gloves.</p> <p>If you are in enforced quarantine, then witnessing your Will might be more difficult. Your witnesses could witness the Will through a glass door or window and sign the Will when it is brought to them.</p>