

EFFECTING LEGAL ARRANGEMENTS AND
EXECUTING DOCUMENTS BY ELECTRONIC MEANS
- CAYMAN ISLANDS

As of 1 January 2021

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
COURT DOCUMENTS		
General	Court documents are usually filed as originals, with wet-ink signatures.	PD 5 of 2020 permits the electronic (i.e. not original) copies of Court documents (such as originating process, orders, judgments and the like) to be filed and also allows the Court to apply an electronic signature, seal and date at their end. Although the PD states that GCR Order 63 requires the maintenance of hard copy files and that hard copies should be filed once normal business post COVID-19 resumes, electronic filing is largely still the current practice.
AFFIDAVITS		
For Court Proceedings	In normal circumstances, affidavits for use in court proceedings are sworn in the presence of a notary public or commissioner for oaths.	GCR Order 41 Rule 4 allows parties to file an affidavit unsworn with leave of the Court. However, the Notaries Public (Virtual Conduct of Notarial Acts) Regulations, 2020 set out the procedures to be followed where the affiant will be appearing by video, and not in the physical presence of the notary (see Notarial Acts, below). The Regulations therefore largely circumvent the times when unsworn evidence would need to be filed.
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.	The Notaries Public (Virtual Conduct of Notarial Acts) Regulations, 2020 provides a procedure for the affiant to appear by contemporaneous video, and not in the physical presence of the notary.
AGREEMENTS AND CONTRACTS		
Individual	Agreements and contracts are typically signed by an individual and witnessed. Witnesses are not required for the validity of standard agreements and contracts, but are often used as an evidentiary backstop, so that neither party can claim that they did not sign.	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, in the absence of extraordinary circumstances, likely satisfy a court in the event of a dispute. It may be prudent to record the signature and witnessing session for future validation.
Company	See s. 81 of the Companies Act: Contracts ... or other instruments on behalf of any company may be made as follows - ... (a) any contract or other instrument which, if made between private	As above, with the signatory being any person expressly or impliedly authorised to sign on behalf of the company.

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	<p>persons, would be by law required to be in writing and signed by the parties to be charged therewith may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company; and</p> <p>(b) any contract which, if made between 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 company by any person acting under the express or implied authority of the company.</p> <p>NB: Execution formalities may also be dictated by the Articles of Association.</p>	
ELP	<p>The General Partner of the ELP is the one who signs things for the ELP, so the formalities will depend on whether the GP is itself a company, partnership or individual.</p> <p>See s. 27 of the ELP Act:</p> <p>...any partnership or subscription agreement and any agreement, contract, deed, instrument including any instrument under seal or document entered into by or on behalf of the GP for itself (in the case of the partnership agreement) or otherwise on behalf of the ELP is executed validly by the parties where it is executed in any manner contemplated by the parties, if it is executed in accordance with Cayman law.</p> <p>NB: Execution formalities may also be dictated by the Limited Partnership Agreement.</p>	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).
LLC	<p>See s.66(1) of the LLC Act:</p> <p>Contracts... or other instruments on behalf of a limited liability company may be made as follows;</p> <p>(a) any contract or other instrument which, if made between private persons, would be by law required to be in writing and 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 the express or implied authority of the limited liability company; and</p> <p>(b) any contract which, if made between 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 the express or implied authority of the limited liability company.</p> <p>NB: Execution formalities may also be dictated by the LLC Agreement.</p>	As for companies, with the signatory being any person expressly or impliedly authorised to sign on behalf of the LLC.
DEEDS		
Individual	<p>See s. 8 of the Property (Miscellaneous Provisions) Act:</p> <p>... an instrument is validly executed by an individual as a deed or an instrument under seal if it satisfies the requirements of this section.</p> <p>(1) A deed or instrument under seal satisfies the requirements of this section if</p> <p>(a) it is signed in accordance with subsection (3); and</p>	Amendments are proposed to the Property (Miscellaneous Provisions) Act that will expressly provide for virtual witnessing of deeds by an individual. If passed, the amended law will permit the virtual presence of a witness so long as the witness can contemporaneously view the signing of the deed or instrument remotely and, where the individual signing the deed or instrument is not personally known to the witness, the individual presents valid photo identification to the witness contemporaneously.

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	<p>(b) it is either;</p> <ul style="list-style-type: none"> (i) sealed; or (ii) expressed to be, or is expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed. <p>(2) For the purpose of this section, a deed or instrument under seal may be signed in any manner contemplated by the parties thereto, including, without limitation;</p> <ul style="list-style-type: none"> (a) by a signature on the complete deed or instrument; or (b) by a signature on any signature page or execution page to the deed or instrument (whether or not the deed or instrument is at such time in final form) which is attached by the individual to (or at the direction of, or on behalf of, the individual, or otherwise with the individual's authority to) the deed or instrument, if the deed or instrument is (or the signature page or execution page, as the case may be, is) signed either; <ul style="list-style-type: none"> (i) by the individual in the presence of a witness who attests his signature; or (ii) at the direction of the individual and in his presence and the presence of two witnesses who each attests the signature of the person signing on behalf of the individual and that the individual so directed such person to sign. 	
Company	<p>See s. 81 of the Companies Act:</p> <p>...deeds, instruments under seal or other instruments on behalf of any company may be made as follows;</p> <ul style="list-style-type: none"> (a) a contract or other instrument which, if made between individuals, would by law be required to be in writing, and to be made by deed or under seal, and a deed or instrument under seal may be made by instrument; <ul style="list-style-type: none"> (i) sealed with any seal of the company; or (ii) which is executed on behalf of the company by any person acting under the express or implied authority of the company and which is either expressed to be executed as, or otherwise makes clear on its face it is intended to be, a deed or instrument under seal; ... <p>NB: Execution formalities may also be dictated by the Articles of Association.</p>	<p>Electronic signatures permitted.</p> <p>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, in the absence of extraordinary circumstances, 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>
FILINGS AND RETURNS		
CIMA	<p>Some CIMA filings and returns are accompanied by statutory declarations or affidavits.</p>	<p>In lieu of a notarised affidavit, CIMA will accept written confirmation from an operator of a fund, applying to be registered/licensed pursuant to the Mutual Funds Act or Private Funds Act, authorising the registered office or other service provider to file the fund's registration/application on behalf of the operator. CIMA will accept uncertified resolutions that confirm the de-registration/cancellation date of a fund.</p>
Registrar	<p>ROC filings are done online.</p>	<p>No special procedures required.</p>

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LAND REGISTRY DOCUMENTS

All	Land Registry documents are filed in person as originals, with wet-ink signatures.	In the early months of the pandemic, the Cayman Islands Property Registry put into place interim procedures to allow for electronic filings provided that the party filing certified that they were in possession of the original. Now that there is no active community transmission of Covid-19 in the Cayman Islands, the Registry is back to normal operating procedures.
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NOTARIAL ACTS

All	Notarial acts must be performed by a notary public and require the notary's signature and affixing of the seal.	<p>The Notary Public (Virtual Conduct of Notarial Act) Regulations, 2020 allow a notary public to use, on prescribed conditions, "communication technology" to carry out virtually a notarial act, such as witnessing the execution of a document by a "remotely located individual" (who must demonstrate that he or she is physically situated in the Cayman Islands).</p> <p>The term "communication technology" is defined to mean "any electronic device or process that facilitates communication of visual images and audio in real time between a notary public and a remotely located individual, including a remotely located individual who has visual, hearing or speech impairment".</p> <p>A "remotely located individual" means "an individual who is not in the physical presence of the notary public who is required to perform a notarial act under the Act".</p> <p>Under the Regulations and notwithstanding any requirement under any other law a notary public may, subject to certain conditions, use communication technology to carry out virtually:</p> <ol style="list-style-type: none"> (1) any of the notarial acts listed in Schedule 5 to the Notaries Public Act; or (2) any act that is required to be performed by a notary public under any law including the provisions of any treaty or convention and any protocol to such treaty or convention that is applicable to the Cayman Islands. <p>A notary public who uses communication technology to</p> <ol style="list-style-type: none"> (1) administer an oath shall record, or cause to be recorded, the performance of the notarial act; and (2) perform an act under regulation 3 other than the act of administering an oath, may, upon prior notification of the remotely located individual, record, or cause to be recorded, the performance of the act. <p>A notary public may repeat the notarisation of a relevant document in relation to which notarial acts were performed where the notary public receives the relevant document together with a copy of the notarised document within 30 days after the date of execution.</p> <p>The regulations shall cease to have effect on 16 April 2022 or at such other date as Cabinet may appoint by Order.</p>
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POWERS OF ATTORNEY

Individual	<p>The POA Act provides that an instrument creating a power of attorney must be executed as a deed or as an instrument under seal by the donor (this is subject to the note below about exempted limited partnerships: read on).</p> <p>The Property (Miscellaneous Provisions) Act provides that an instrument is properly executed as a deed or an instrument under seal if it is signed by the individual in the presence of a witness.</p> <p>There's an odd bit in the POA Act: "Where such instrument is executed as a deed</p>	<p>Note the requirement that the deed be executed "in the presence of a witness who attests his signature."</p> <p>Amendments are proposed to the Property (Miscellaneous Provisions) Act that will expressly provide for virtual witnessing of deeds by an individual. If passed, the amended law will permit the virtual presence of a witness so long as the witness can contemporaneously view the signing of the deed or instrument remotely and, where the individual signing the deed or instrument is not personally known to the witness, the</p>
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	or as an instrument under seal by a person by the direction and in the presence of the donor of the power, two other persons shall be present as witnesses and shall attest the instrument." This has led to the common belief that two witnesses are required for a power of attorney. This is not the typical scenario. The 'two witnesses' rule would apply in a 'death bed' situation, where the donor is instructing someone else to sign the power of attorney that would appoint the attorney-in-fact but not actually signing the deed personally. In all other cases, one witness will suffice.	individual presents valid photo identification to the witness contemporaneously. In the meantime, family members (or cohabitants or neighbours), provided that they are over 18 with full mental capacity, can witness documents.
Company	The POA Act exempts companies from the witnessing requirements. Section 81 of the Companies Act provides that any person duly authorised by the company may execute a document as a deed by having the document express on its face that it is intended to be a deed and signing it by hand. In the alternative, the company can execute the power of attorney under seal. The formalities for the affixing of the corporate seal are found in the articles of association	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, in the absence of extraordinary circumstances, likely satisfy a court in the event of a dispute. It may be prudent to record the signature and witnessing session for future validation.
PROXY FORMS, APPOINTMENTS AND AUTHORISATIONS		
Individual	Proxies, appointments, consents and authorisations can be signed by an individual.	Electronic signatures permitted. See above re Deeds if any of these are to be executed as a deed.
Company	Proxies, appointments, consents and authorisations are, as a matter of best practice rather than statute, signed by the director or member (shareholder). The articles of association may impose additional formalities.	Electronic signatures permitted but check the articles of association re witnesses when being signed on behalf of a company.
SHARE TRANSFER FORMS		
Individual	Share transfer forms can be signed by an individual as a transferor (and/or transferee if required by the company's articles of association) and will be subject to any further requirements as to form in the subject company's articles of association. See above re Deeds if the share transfer form is drafted as a deed.	Electronic signatures permitted. See above re Deeds if any of these are to be executed as a deed.
Company	The Companies Act does not prescribe a particular form for a share transfer, nor does it expressly require that a share transfer form be signed in the ordinary course. However, standard practice is for such forms to be signed by the transferor. The articles of association may impose additional requirements.	Electronic signatures permitted, but check the articles of association re witnesses when being signed on behalf of a company.
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	Under the Wills Act (2020 Revision) a Cayman Islands 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.	No exceptions to this requirement have yet been developed in the Cayman Islands. In practical terms, as there is no local community spread of Covid-19 in the Cayman Islands, wills are being safely executed in person with social distancing measures in place where

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the risk level warrants.