

EFFECTING LEGAL ARRANGEMENTS AND  
EXECUTING DOCUMENTS BY ELECTRONIC MEANS  
- JERSEY

USUAL EXECUTION FORMALITIES		ELECTRONIC MEANS
<b>COURT DOCUMENTS</b>		
<b>General</b>	Court documents are usually filed in hard copy and scanned copies are also emailed to the Judicial Greffe.	The process for filing court documents remains unchanged.
<b>AFFIDAVITS</b>		
<b>General</b>	In normal circumstances, affidavits for use in court proceedings or before a statutory body are sworn in the physical presence of an advocate or solicitor of the Royal Court of Jersey in accordance with the requirements of the Affidavits (Advocates and Solicitors) (Jersey) Law 1992.	<p>Since early in the pandemic, the Jersey Court has taken a practical approach to the requirement of physical presence and will regard an affidavit as having been duly taken if the relevant advocate or solicitor:</p> <ul style="list-style-type: none"> <li>(i) Establishes contact with the deponent by video link for the purpose of the affidavit being sworn.</li> <li>(ii) Positively identifies the deponent before the affidavit is sworn.</li> <li>(iii) Administers the oath or affirmation in the usual way.</li> <li>(iv) Sees the deponent sign the affidavit.</li> </ul> <p>The partly executed document must then be posted or delivered or in some other way transmitted to the advocate or solicitor who will then sign and date the affidavit and indicate the date upon which the affidavit was sworn (if they do not receive the document the same day).</p>
<b>AGREEMENTS</b>		
<b>Individual</b>	<p>Jersey law does not include a concept analogous to a "deed" and, subject to express requirements imposed by statute or customary law (e.g. on making a will) there are no signing formalities imposed on any type of agreement.</p> <p>Accordingly, agreements in Jersey are typically signed by an individual in wet-ink. Witnesses are not required unless prescribed by statute (e.g. when making a will or granting a power of attorney), but can be used as an evidentiary backstop, so that neither party can claim that they did not sign.</p> <p>The above is also true where an individual is acting in their capacity as a director of a company, partner in a partnership or general partner of a limited</p>	<p>Electronic signatures permitted.</p> <p>Where a witness has been used for evidentiary purposes as opposed to pursuant to a legal requirement, remote witnessing is permissible.</p>

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	partnership, save that any requirements or restrictions set out in the relevant constitutional documents will also apply.	
<b>Company (no seal)</b>	<p>As above, save as imposed by statute or customary law in respect of specific documents there are no signing or witnessing formalities imposed on a Jersey company.</p> <p>As such, subject to any requirements imposed by its articles of association, a Jersey company may sign by any person and any means authorised by the board of directors. Documents will usually be signed by a director or other officer of the company but signing authority is also regularly delegated to other authorised signatories.</p> <p>In the absence of any signing formalities it is also not common for a Jersey company to execute documents under seal, though this is permitted under Jersey company law.</p> <p>The above is also true where a company is acting in its capacity as a partner in a partnership or general partner of a limited partnership, save that any requirements or restrictions set out in the relevant constitutional documents will also apply.</p>	<p>Electronic signatures permitted, but check articles of association for any witnessing requirements or other formalities.</p> <p>There is currently no general domestic rule in legislation or case law that determines whether a requirement to witness a signature is legally valid where the witnessing occurs remotely. The present assumption is that any witnessing requirement can only be met where the witness witnesses the provision of a signature in person.</p> <p>Whilst there have been some specific developments in light of COVID-19 (see above in relation to affidavits and below in relation to powers of attorney) it is not clear that these can be relied on to have general effect.</p> <p>As a result of the above, the EComms Consultation is proposing amendments to the EComms Law to include a positive statement that remote witnessing is permitted and effective.</p> <p>Where a witness has been used for evidentiary purposes as opposed to pursuant to a legal requirement, remote witnessing is permissible.</p>
<b>Company (seal)</b>	It is not uncommon for Jersey companies to execute documents or instruments under seal in certain circumstances (e.g. the issue of a share certificate by the company secretary without the need for the signature of a director).	<p>The EComms Law expressly provides that a seal will not be denied effect simply because it is in electronic form.</p> <p>However, some local practitioners argue that the current wording of the EComms leaves doubt that this provision is of general application and accordingly, at present, it is safest to use a physical seal.</p> <p>As a result of the above, the EComms Consultation proposes amendments to the EComms Law clarifying that a signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability only because it is in electronic form, whether such a requirement is as a result of statute or otherwise, and that the EComms Law applies both to documents sent to another, and documents which are simply stored after execution.</p>
<b>NOTARIAL ACTS</b>		
<b>All</b>	Notarial acts must be performed by a notary public and typically require the notary's signature and affixing of the seal.	<p>A notary public in Jersey may use video conference technology to certify execution of a document signed (including by electronic signature) by an individual by means of a notarial act provided that the following procedure is followed:</p> <ol style="list-style-type: none"> <li>(i) The individual in question must demonstrate that they are physically situated in Jersey.</li> <li>(ii) The individual shall provide the notary with an electronic copy of the document in respect of which the notarial acts are to be performed together with any necessary ID documents.</li> <li>(iii) The notary, having witnessed the signature or requisite act, may notarise the electronic copy of the document and send it back to the individual in question.</li> <li>(iv) The notary should take steps (with consent) to record the video conference or take screen capture photos of the individual, his or her identity documents and the relevant document.</li> </ol>
<b>POWERS OF ATTORNEY</b>		
<b>Individual</b>	Under the Powers of Attorney (Jersey) Law 1995, an ordinary power of attorney granted by an individual must be signed in the presence of a witness.	There is currently no general domestic rule in legislation or case law that determines whether a requirement to witness a signature is legally valid where the witnessing occurs remotely. The present assumption is that any witnessing requirement can only be met where the witness

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		<p>witnesses the provision of a signature in person.</p> <p>As a result of COVID-19, there have been specific legal developments to provide for accepting remote witnessing as a valid method of witnessing, including the 2020 Regulations and Court Directions, which provide a method for the remote witnessing of documents relating to probate and wills, and powers of attorney.</p> <p>The Court Direction confirms that an individual may sign or attest their signature on an ordinary power of attorney in front of a witness via video conference provided that:</p> <ul style="list-style-type: none"> <li>(i) The witness positively identifies the donor and sees the donor sign the power of attorney.</li> <li>(ii) The donor and the witness sign the power of attorney on the same page.</li> <li>(iii) The power of attorney itself indicates on its face the process by which it was executed (e.g. it must note that it was witnessed via video conference).</li> </ul>
<b>Company</b>	Under the Powers of Attorney (Jersey) Law 1995, a general power of attorney granted by a body corporate may be duly executed in any manner permitted by its articles of association or other internal regulations without any further attestation.	Electronic signatures permitted, but check articles of association for any witnessing requirements or other formalities.
<b>PROXY FORMS, APPOINTMENTS AND AUTHORISATIONS</b>		
<b>All</b>	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 articles of association for any witnessing requirements or other formalities.
<b>SHARE TRANSFER FORMS</b>		
<b>All</b>	The Companies Law 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 articles of association for company whose shares are being transferred for any formalities.
<b>VIRTUAL CLOSINGS, GENERALLY</b>		
<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.
<b>WILLS AND TESTAMENTARY INSTRUMENTS</b>		
<b>All</b>	<p>Under Jersey law:</p> <ul style="list-style-type: none"> <li>(i) A will of moveable property must be signed in the presence of two witnesses. The witnesses do not need to sign the will in the testator's presence (or in each other's presence) but they must be present when testator signs the will.</li> <li>(ii) A will of immoveable property must be signed at the end by the testator in the presence of two witnesses (or the testator must acknowledge his signature in their presence) and the two witnesses must sign in each other's presence and in the presence of the testator.</li> </ul>	<p>Following the implementation of the Covid-19 (Signing of Instruments) (Jersey) Regulations 2020, the manner in which wills of movable and immovable estates of a testator that cannot execute the will in the physical presence of one or more of the witnesses have been updated to facilitate compliance with the social distancing requirement issued by the States of Jersey in response to the Covid-19 pandemic.</p> <p>Under the new requirements, a will can be validly witnessed video-link if:</p> <ul style="list-style-type: none"> <li>(i) The will cannot be signed by the testator in the physical presence of one or both of the witnesses because of the measures taken to reduce the spread of Covid-19</li> </ul>

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- (ii) At the time that the will is about to be signed, the testator and the witnesses must be able to see one another, either in person or over an audio-visual link.
  - (iii) The witness (a) positively identifies the testator, (b) sees the testator sign the will, and (c) satisfies himself or herself, by whatever means he or she considers practical, that the document signed by the testator is the will.
  - (iv) In the case of a will of immovable property, each witness and the testator must hear, at the same time, the will read aloud in its entirety.
  - (v) As soon as reasonably practicable following the signing of the will, the witness must provide the testator (or their advocate or solicitor) with a written declaration confirming the points above and the method used to identify the testator.
- These changes are currently expected remain in place until 30 April 2021.