

# Using Electronic Signatures in the Isle of Man.

While the use of electronic signature (or “e-signatures”) to sign/execute documents is nothing new in the world of business, increasingly, and as a result of the remote working set-up businesses across the world have been required to adopt, the question of whether it is possible (and legal) to execute documents by electronic signature has been posed.

## What are Electronic Signatures?

Electronic signatures (or e-signatures) in the Isle of Man include:

- a person typing their name into a document or an email containing the terms of the document;
- a person electronically pasting their scanned signature into the signature block of an electronic (soft) copy of the document;
- a person inserting their scanned or typed signature into the signature block of a document via a web-based e-signature platform (such as DocuSign or Adobe Sign);
- a person using their finger, light-pen or touch screen to write their name electronically in the signature block of the document; or
- clicking an ‘I accept’ box.

## How are Electronic Signatures treated in the Isle of Man?

E-signatures have been permitted in the Isle of Man since 2000 pursuant the Electronic Transactions Act 2000 and the Electronic Transactions (General) Regulations 2017 (together the “Legislation”). Under the Legislation, a transaction is deemed to be valid even if it has taken place electronically. The requirement for a written “wet-ink” signature is deemed to have been met under the Legislation where, inter alia,:

- there is a reliable and appropriate method in place to ensure the identification of the signatory and to indicate his/her approval of that which is communicated;
- having regard to all the relevant circumstances at the time, the method is as reliable as is appropriate for the purpose of the information communicated; and
- that signatory has indicated his/her approval.

There should in essence, be active steps required to be taken by the signatory to remove any doubt of his/her intention for the electronic signature to be binding.

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As such, e-signatures are broadly treated in the same way as wet-ink signatures and are accordingly deemed to be a legally valid method of executing documents (including a deed), save when used in certain transactions which are deemed to be “excluded transactions”.

Such excluded transactions include (but are not limited to) the following:

- the conveyance or creation of an interest in land;
- a mortgage or charge of land;
- the grant of a power of attorney;
- a transfer or mortgage of, or a share in a registered in, a registered ship or registered vessel; and
- the granting of security by a company over its undertaking, property or revenue.

The allowance of the use of e-signatures in the Isle of Man however does not take away from certain practical issues needing to be considered, such as whether the person signing the document is who they purport to be, as well as the reliability and security of any e-signature technology used.

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## Electronic Signatures and Regulated Entities

Regulated entities should note that the Isle of Man Financial Services Authority expects regulated entities to consider whether a wet-ink signature is required for legal efficacy or whether an e-signature is acceptable legally and by the counterparty, and that such regulated entities undertake a document a business and technological risk assessment before doing so.

Cains is advising clients on a range of COVID-19 related issues. Please also see how COVID-19 may impact completions and the practical considerations which should be considered.

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