

Alert

Electronic Execution of Documents in the British Virgin Islands

Authors: Robert J.D. Briant, Partner | Anton Goldstein, Partner | Rachael Pape, Associate

The present COVID-19 pandemic is requiring more of us than ever to work remotely. This can raise particular challenges in terms of the execution of documents, with physical “wet ink” execution processes often proving to be unmanageable for many signatories. This need not, however, create undue concern: British Virgin Islands (BVI) law provides for a comprehensive and flexible approach to electronic execution of documents.

Digital signatures

PDF scanned copies of signatures are accepted under BVI law with no requirements for original documents or “wet ink” signatures. In addition, digital signatures are generally permitted under BVI law for documents other than deeds. A valid electronic signature on documentation binds the signatory to all the terms of the documentation, in just the same manner as a wet-ink signature on a document is taken to demonstrate the consent of the signatory to the terms set out in the document.

BVI law recognises a variety of methods to create an “electronic signature”. These include systems such as Docusign, which we note has recently been successfully used by a number of our clients in order to execute documents where signatories are working from home and may not have access to a printer and/or scanner.

An individual can give instructions to someone else to affix their electronic signature to a document on their behalf. Where an individual’s signature is added as a clerical act, it is prudent to ask for authorisation from that individual that he or she consents to the use of the signature on each occasion.

Company seals and form of execution

Typically deeds and documents do not need to be executed by BVI companies using the company seal. Unless otherwise required by the company’s articles of association or the governing law of the document (where this is not BVI law), documents, including deeds, may be executed by any one director of the company without the need for a seal or for the signature to be witnessed. However, a “wet ink” signature, rather than a digital signature, is required for deeds.

Pre-executed signature pages

Pre-executed signature pages (whether under hand or under seal) are expressly permitted to be attached to a deed or instrument governed by BVI law. Provided that the consent of the signatory is provided in respect of the attachment of its pre-executed signature page(s) to the deed or instrument, such deed or instrument will be considered to be validly executed.¹

Non-BVI entities executing deeds or instruments under seal governed by BVI law can rely on the requirements for execution of documents in the jurisdiction in which the entity is incorporated. Provided that such requirements have been satisfied, the deed or instrument will be considered to be validly executed by the non-BVI entity.

¹ This provision of BVI law effectively abrogates the uncertainty arising from the decision in the UK in the case of *R (on the application of Mercury Tax Group Ltd and another) v. HMRC & Others* [2008] EWHC 2721.

We are here to help

Please feel free to reach out to your usual Conyers contacts with any questions regarding execution of documents under BVI law or by BVI entities, no matter how basic they may seem. We will be pleased to help and would like to reassure you of our continued support.

Authors:

Robert J.D. Briant

Partner

robert.briant@conyers.com

+1 284 852 1100

Anton Goldstein

Partner

anton.goldstein@conyers.com

+1 284 852 1119

Rachael Pape

Associate

rachael.pape@conyers.com

+1 284 852 1114

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