

Electronic Signatures – Valid Under Gibraltar Law?

Covid-19 is changing our usual business practices. As people are being forced to work from home, one concern being raised is whether the use of electronic signatures is valid under Gibraltar Law. In this short article, we summarise the legal analysis and considerations which we hope will assist you in determining when electronic signatures may be effectively used and accepted.

On 1st July 2016, an EU Regulation called the Electronic Identification Regulation (EU) 910/2014 (“eIDAS”) came into force. eIDAS confirmed that “an electronic signature should not be denied legal effect and admissibility as evidence in legal proceedings just because it is electronic”. eIDAS continues to have legal effect in Gibraltar notwithstanding our departure from the EU on 31 January 2020.



The relevant provisions of eIDAS are also reflected and incorporated in the [Gibraltar Electronic Identification and Trust Services for Electronic Transactions Regulations 2017](#) (the “Gibraltar Regulations”).

The Gibraltar Regulations define an electronic signature as anything in electronic form that:

- “(a) *is incorporated into or otherwise logically associated with any electronic communication or electronic data; and*
- “(b) *purports to be used by the individual creating it to sign.*”

It is important to satisfy yourselves and be able to evidence that the document which has been signed electronically has been signed by the person who purports to have signed it. As such, it is always prudent to use credible systems and programmes which incorporate an authentication system. A proper authentication mechanism will satisfy the two above-listed requirements and provide you with the protection sought.

Generally, simple agreements can be signed electronically. However, there are certain documents which require specific execution formalities. Care and attention should be taken in analysing the validity and enforceability of documents signed electronically.

The Gibraltar Regulations are enacted under the [Electronic Commerce Act 2001](#) (the “EC Act”). The EC Act provides, amongst other things, that subject to the exemptions listed below and any agreement by the parties to the contrary, a contract may be concluded by transmission of offer and acceptance through electronic means.

This general rule does not apply to any contract in connection with:

- “(a) *conveying or transferring land or any interest in real property;*
- “(b) *rights of succession under a will or other testamentary instrument; [or]*
- “(c) *categories excluded by regulations made by the Minister.*”

There is some uncertainty with deeds which are an example of a type of document with specific execution formalities. Under Gibraltar Law, deeds executed by a company may be signed under common seal in the presence of persons authorised by the articles of association of that entity, or by way of being expressed to be executed by way of deed in accordance with the authority conferred by the board of directors (usually signed by two directors, a director and secretary or by a director in the presence of any witness). Deeds require one person to witness (and thereby attest) the signature of another person. As such, in the case of deeds signed by individuals, the individual who is a party to the deed will be required to sign the document in the presence of an independent person. A further requirement to ensure the validity of a deed is for unconditional delivery of the document deed.

Whilst it is possible to have a deed signed electronically, it would be prudent to avoid electronic execution and delivery of a deed in the event that doubts are ever raised as to compliance with the execution formalities required. The same caution also applies to powers of attorney, testamentary documents and other such documents with specific execution formalities.

We hope the above explanation will clarify and assist you over the coming difficult period. However, if you have any queries on the electronic signature of documents or require any assistance generally, Hassans are on hand to provide support. As such, do not hesitate at any time to contact us.

For more information, please contact:

