

Cayman Islands Update: Witnessing Deeds or Instruments Remotely in a COVID-19 World

The Cayman Islands has recently introduced legislation which temporarily allows for the valid signing of certain documents where the witness is not in the immediate physical presence of the person signing.¹ This change, which follows previous regulations introduced in April 2020 to allow remote notarisation, aims to address the challenges that have arisen in respect of the measures introduced in a number of jurisdictions in response to COVID-19 pursuant to which individuals have, by law, either been prohibited from leaving their homes or gathering in confined spaces with others except for specified reasons (of which travelling to effect the signing or witnessing of documents is generally not one).

Prior to its amendment, the Property (Miscellaneous Provisions) Act (2017 Revision) (the "Act") required that any deed or instrument under seal executed by an individual in a personal capacity had to be signed either: (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 individual so directed such person to sign"*.²

Either means would require the individual signing the deed or instrument and their witness(es) to be in physical proximity with each other – witnessing a signature remotely would have failed under

either scenario.

The 2020 Act has, however, temporarily changed the above requirements by, among other things, amending section 8 of the Act.³ Presently, it is therefore sufficient for an individual to be in the 'virtual presence' of their witness, meaning that both persons are able, if using an electronic device or process that facilitates communication of visual images and audio in real time, to contemporaneously see, hear and speak to each other. The benefit of this amendment is that it is now possible for a deed or other instrument to be witnessed via Zoom, Teams, FaceTime or other such similar communication systems.

Currently, the requirements for a deed or instrument to be validly witnessed are therefore that, where an individual or another person at the direction of the individual or on their behalf signs a deed or instrument in the virtual presence of a witness: (i) *"the witness must be able to contemporaneously view the signing of the deed or instrument remotely"*; and (ii) *"where the individual signing the deed or instrument is not personally known to the witness, the individuals shall present a valid photo identification to the witness contemporaneously"*.⁴

Practically it would seem prudent, given the possible temporary nature of the amendment introduced by the 2020 Act, to ensure that a note of the fact that the relevant deed or instrument

¹ The Property (Miscellaneous Provisions) (Amendment) Act, 2020 (the "2020 Act")

² Sections 8(3)(b)(i) and (ii) of the Act

³ The amendment introduced by the 2020 Act to section 8 of the Act shall apply until 16 April 2022 or such other date as cabinet may by order appoint.

⁴ Section 8(4A)(a)(i) and (ii) of the Act (as introduced by the 2020 Act)

has been executed taking advantage of the virtual witnessing provisions is kept with the relevant deed or instrument and, before seeking to rely on these provisions, to check that a potentially dusty and long unused passport or similar such photo identification has not expired.

It is important to be aware that the 2020 Act introduced no comparable change to the Wills Act (As Revised) and the execution of wills. However, it is worth noting that the Formal Validity of Wills (Persons Dying Abroad) Act 2018 (As Revised) (which came into force on 1 February 2019) provides that a will shall be regarded as properly executed and thus capable of being admitted to probate in the Cayman Islands if it complies with (among other options) the internal law in force where the will was executed and so, if the will can be signed in a jurisdiction where the witnessing requirements have been relaxed, then it will be valid under Cayman Islands law.

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