



Isle of Man Chamber of Commerce

Electronic Transactions Consultation – October 2021

Below sets out a response from the Isle of Man Chamber of Commerce Legislation Group. This response incorporates the views of a cross section of the Chamber membership.

Q1: Do you agree with the proposal that the ETA should be amended so that public bodies may simply accept electronic transactions by consent, in the same way as private individuals or businesses may under the ETA? Please explain your view.

YES. We want to make it easy for individuals to understand and use electronic transactions if they wish. A consistent approach for public and private bodies will help to achieve this. The starting principle now that we are in the Digital Age is that anything you can sign in ink you should also be able to sign using an eSignature. This principle has been adopted by many leading jurisdictions including the EU and UK.

The UK Lord Chancellor confirmed in March 2020 that eSignatures are legal in most cases even when a statutory requirement for a signature predates the digital age: <https://www.lawgazette.co.uk/law/electronically-signed-deeds-are-legal-lord-chancellor-confirms/5103306.article>

This followed an extensive review by the UK Law Commission which strongly supported the use of e-signatures:

<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/09/Electronic-Execution-Report.pdf>

eSignatures can be more secure, harder to fake and with better audit trail, as well as cheaper and faster.

Q2: Do you agree with the proposal that the ETA should be amended in order to enable digital signatures to be admitted in legal proceedings for example in court documents and witness statements? Please explain your view.

YES. Many Courts globally are already accepting and using such documents, benefiting all Court participants, e.g. the EU and UK. There is no reason why this should not be the case in the IOM.



Isle of Man Chamber of Commerce

Q3: Do you agree with the proposal that it should be possible to electronically execute transfers or mortgages of, or of a share in a registered ship or registered vessel (within the meaning of the Merchant Shipping Registration Act 1991)? Please explain your view.

YES. The UK and other jurisdictions are already accepting such documents. Detailed consideration will need to be given to witnessing requirements, jurisdiction of execution and notarisation provisions.

Q4: What difficulties might arise from making electronically executed ship mortgages or transfers of ownership legally valid?

Place of execution and local requirements - ability of owners in jurisdictions being able to execute electronically under the laws governing them - perhaps a reciprocal legislation arrangement as for demise registration.

Witnessing arrangements and notarisation requirements. Notaries cannot execute outside of their jurisdiction.

Q5: Do you think that the Regulations under the Electronic Transactions Act 2000 should be amended to allow an electronically transacted general power of attorney?

Yes, provided that electronic witnessing requirements are sufficiently dealt with for instances where this is necessary, we would support. This would allow commercial flexibility and if this is the only change that is permitted, it would go some way to providing an option for easier transaction of business.

Q6: Do you think that there is benefit in recognising eIDAS standards in the Isle of Man? Please explain your view.

YES. The UK and EU member states are subject to eIDAS (Electronic Identification, Authentication and Trust Services), an [EU regulation](#) on [electronic identification](#) and [trust services](#) for [electronic transactions](#) in the [European Single Market](#). It was established in EU Regulation 910/2014 of 23 July 2014 on electronic identification and repeals [directive 1999/93/EC](#) from 13 December 1999.

eIDAS has quickly become a global benchmark for eSignatures and eID (electronic identification) in a similar way to GDPR for data privacy.

eIDAS has provided a widely-recognized legal and technical set of standards that are in use and proven. As a result, there are many software products readily available that meet these standards. The IOM should recognize eIDAS as that will:

- give all parties (including international clients and other counterparties) greater legal certainty, and
- enable IOM businesses to benefit from the existing IT solutions that comply eIDAS.



Isle of Man Chamber of Commerce

The alternatives would be:

- stay silent – this would result in legal and technical uncertainty, putting Manx businesses and consumers at risk, or
- develop our own standard – we simply do not have the time nor expertise to re-invent the wheel; plus it would be unfamiliar to businesses and other users internationally.

Recognising eIDAS will therefore be the fastest, cheapest, lowest risk option – by far.

Q7: Would a general provision in the Electronic Transactions Act 2000 to enable remote witnessing of documents be helpful? Please explain your view.

YES. This is worthy of consideration.

Legally, certain documents such as deeds need to be witnessed in the physical presence of the signatory.

The UK accepts that both signatory and witness can use e-signatures although the law states they should be in the same physical location. HM Land Registry has accepted e-signatures on land and property deeds for over a year, greatly speeding up the process. IOM should do the same ASAP. For more information about this great example, visit: <https://hmlandregistry.blog.gov.uk/2021/08/31/whats-happening-with-electronic-signatures-in-the-property-market/>

However, several jurisdictions have gone further, passing laws that permit witnessing to take place remotely via video link. This is important in a wide range of use cases, for example:

- where social distancing prevents either the signatory or witness from being physically in the same location
- modern business practices (where key personnel are distributed around the world) mean that it is difficult, costly, not environmentally friendly and great waste of time to force individuals to the same physical location to sign and witness documents.

Q8: Do you have any views as to how a process for remote witnessing of documents should work?

The use of video technology can enable the witness to observe the signatory. Such processes are already permitted in certain jurisdictions such as Australia so there are precedents we can learn from. This link explains how remote witnessing is working successfully in Australia's state of Victoria: <https://www.justice.vic.gov.au/electronicwitnessing>

In the USA on May 13, 2021, [Senate Bill 1625](#), the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021 (the "[SECURE Notarization Act](#)"), was introduced as bipartisan legislation to authorize and establish minimum standards for electronic and remote notarizations that occur in or affect interstate commerce. Link: <https://www.dlapiper.com/en/us/insights/publications/2020/03/coronavirus-federal-and-state-governments-work-quickly-to-enable-remote-online-notarization/>



Isle of Man Chamber of Commerce

Q9: Are there any other measures or issues to do with electronic transactions, identification, signatures or execution of documents that should be considered by the Isle of Man Government?

IOM Government should make it clear Policy that it wants to make it easy and safe for individuals and businesses to access public and private services via digital means. This will help us achieve efficient, effective Government, help our businesses win new business globally and help our community attract the tech natives we need for our economy to flourish.

This Digital policy needs to be clear and adopted by our regulators and businesses. For example, it would be very beneficial for the FSA policy to clearly support appropriate use of eSignatures and eID – plus to encourage all parties to accept them. Currently this is not the case. Many of the IOM's banks and insurers do not accept eSignatures which have been legitimately accepted by wealth managers and other intermediaries (notably TCSPs as well as legal and accounting firms) from their clients. This then forces those businesses to capture ink signatures and associated KYC from their clients who are increasingly from all over the world. This is adding to the costs of local businesses and delaying their ability to serve customers promptly. This is putting them at a disadvantage to their competitors in jurisdictions where the regulators, banks and insurers do accept such eSignatures.

Digital identity is also a very important topic that the IOM needs to address. The Economist reported that Estonia added 1% to GDP by creating a universal digital identity - that is a huge benefit. Economist article 'Covid-19 strengthens the case for digital ID cards': <https://www.economist.com/leaders/2020/09/05/covid-19-strengthens-the-case-for-digital-id-cards>

However, it is not easy. The UK tried and failed to implement a common digital identity. Jersey implemented Yoti which is now working (over 50% of adults have created a Yoti account) but took time to get going: https://www.yoti.com/wp-content/uploads/Jersey_digital_ID_case_study.pdf

The EU is currently developing a European Digital Identity (EDI) for all EU citizens with the framework planned to be released September 2022. Pilots and software solutions will then emerge. This could create a legal and technical standard for the IOM to use – similar to eIDAS. <https://www.pinsentmasons.com/out-law/news/european-commission-outlines-european-digital-identity-framework>

The new Administration should prioritise digital identity. It will take time for the public and private sectors to understand the policy, legal, technical and practical implications of digital identity and agree the best way forward. Any solution should include digital identity for clients of IOM businesses as this can greatly simplify how they do business here, helping our businesses serve them more effectively. Given how digital identity could give a significant



Isle of Man Chamber of Commerce

boost to our economy, help Government serve the public more effectively and efficiently, plus protect our citizens and potentially our customers worldwide, this work should start immediately.