



# TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

*Regulating with Honesty, Integrity and Transparency*

Date 24 June 2022

## REGULATORY ADVISORY NO. 5 OF 2022 ELECTRONIC SIGNATURES

### PURPOSE

To provide guidance on the use of electronic signatures (e-signatures) for the purpose of executing documents required to be filed with the Commission.

### THE LAW

The Electronic Transactions Ordinance (ETO) provides for electronic transactions and for connected purposes. It defines an “*electronic signature*” as a signature in electronic form in, attached to, or logically associated with information which is used by a signatory to indicate his adoption of the content of that information, and is—

- a) linked solely to the signatory;
- b) capable of identifying the signatory;
- c) created using means which the signatory can control; and
- d) relates in such a manner that any later alteration of the information is revealed.

Section 9 of the ETO goes on to provide that where a signature is needed, the requirement shall be met by an electronic record if

- a) a method is used to identify the person and to indicate that the person intended to sign or otherwise adopt the information in the electronic record; and
- b) the method is as reliable as is appropriate for the purpose for which the electronic record was generated or communicated, in the light of the circumstances.

It goes on to provide that an electronic record which meets the requirements shall not be denied legal effect, validity, and enforceability solely on the ground that—

- a) it is not an electronic signature; or
- b) it is not associated with an accredited certificate.

### EXAMPLES OF ELECTRONIC SIGNATURES (not exhaustive)

- i) Wet ink handwritten signature on a document scanned and emailed to the Commission from the signatory’s email.
- ii) Wet ink handwritten signature on a document scanned and emailed or faxed to the Commission from a third party followed up with an email or other reliable identifying communication from the signatory’s email address confirming the scan or fax and adopting the document.



Regulatory Advisory No. 5 of 2022  
Electronic Signatures

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- iii) Electronic documents signed utilising appropriate e-signature platforms such as DocuSign and Adobe Acrobat Sign.

### **GUIDANCE**

A “signature” is defined as the writing of a person’s name on a document in ink with the intention of demonstrating that person’s agreement to the contents. The Turks and Caicos Islands recognises and accepts the use of electronic signatures in most instances. An electronic signature on a document legally binds the signatory to any obligations within the document as if it was signed with a ‘wet ink’ handwritten signature. The Commission will accept electronic signatures which meet the criteria as provided for in the ETO (summarised above) i.e.

- i) It must be created using means which the signatory can control.
- ii) It must be linked to the signatory.
- iii) It must be capable of identifying the signatory.
- iv) There must be the intention to sign or adopt the information.
- v) The method must be appropriate for the purpose used.

Persons dealing with the Commission are advised to consider the criteria as set out in the ETO and this guidance when considering an appropriate platform for establishing and using an electronic signature. The Commission recommends the following:

- i) That any electronic signature platform used should have appropriate security and mitigation measures to maintain the integrity of the signed document.
- ii) The platform should have the ability to automatically track and maintain a time-stamped audit trail of every viewing, printing, sending, signing, or declining activity.
- iii) Once a document is fully executed, it should remain secure and encrypted while on the platform.
- iv) If an executed document is downloaded, the document and signatures should have some sort of tamper-evident seal or certificate.
- v) The platform should also be able to provide some certification providing more detail about the signing process and timelines.

The Commission reserves the right to refuse to accept or seek further clarification on any electronic signature used in interacting with the Commission if it has concerns about whether the signature meets the legal requirements, as set out above.

Please be guided accordingly.

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