

What you need to know about e-Signatures: the law & practice and remote notary public and court services in the UAE

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Nasser Ali Khasawneh

Partner, Co-Head of Global TMT and Chairman – Middle East

Shibani Kapur

Senior Associate, Litigation and Dispute Management

Maria Mazzawi

Senior Associate, Litigation and Dispute Management





We will cover:

1. Law and practice around E-signatures
2. Remote Notary Public and court services



1. Law and practice around E-signatures

1. Law and practice around E-signatures

Federal level: defining E-signatures



- E-Commerce Law No. 1 of 2006, define E-Signatures as:
- *"any letters, numbers, symbols, voice or processing system in Electronic form applied to, incorporated in, or logically associated with a Data Message with the intention of authenticating or approving the same"*
- Any form of electronic authentication is accepted unless prohibited by law



1. Law and practice around E-signatures

Basic E-Signatures and Reasonable Reliance



- The factors which determine reasonableness are set out in Article 18, these include:
 - Nature of the underlying transaction which was intended to be supported by the e-signature and its value if known
 - Whether appropriate steps have been taken to determine reliability
 - Whether the person relying on the e-signature knew or ought to have known that the e-signature had been compromised or revoked
 - Dealings between the originator and party relying on the e-signature



1. Law and practice around E-signatures

Secure Electronic Signatures



- An Electronic signature is considered “secure” if it is possible to verify, through the application of a prescribed or commercially reasonable Secure Authentication Procedure agreed to by the parties, that the Electronic Signature was, at the time it was made
 - attributable only to the person using it
 - capable of verifying the identity of the signatory;
 - under the signatory’s full control; and
 - linked to the electronic signature to which it relates, in a manner which provides reliable assurance as to the integrity of the Signature.



1. Law and practice around E-signatures

Secure Electronic Signatures



- Secure Electronic Signature:
 - most secure form of e-signature
 - subject to secure authentication procedures agreed by the parties
 - enables verification that, at the time of signing, the e-signature was:
 - limited to the person using it
 - capable of verifying the identity of the person
 - under that person's full control, and
 - linked to the electronic message to which it relates
- Consider the use of electronic authentication certificates through an accredited or authorised service provider. The TRA has a list of providers for secure e-signatures online

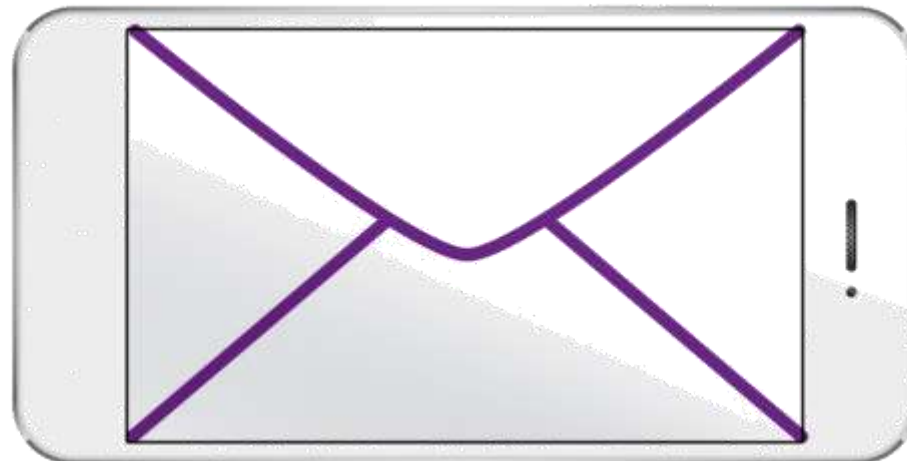
1. Law and practice around E-signatures



Exceptions: when is the use of E-signatures not allowed?

E-Commerce Law recognises e-signatures as admissible evidence. However, E-signatures cannot be used in:

- Matters of personal law (for example, marriage, divorce, and wills)
- Deeds or transactions relating to immovable property
- Negotiable instruments
- Notarisation*
- Any other documents or transactions that might be excluded by way of applicable law



1. Law and practice around E-signatures

Emirate level: Dubai law



- Dubai Electronic Transactions and Commerce Law No.2/2002:
 - E-signatures definition
 - substitute to handwritten signatures subject to reasonable reliance
 - concepts of 'secure electronic signatures' and 'protected electronic signatures'
 - recognised as admissible evidence



1. Law and practice around E-signatures

DIFC



- DIFC Electronic Transactions Law No 2. of 2017:
“an Electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record”
- E-signatures are recognised where DIFC Law requires a document to be signed or provides for certain consequences if a document or a record is not signed
- Parties can agree to exclude the application of e-signatures or impose additional requirements



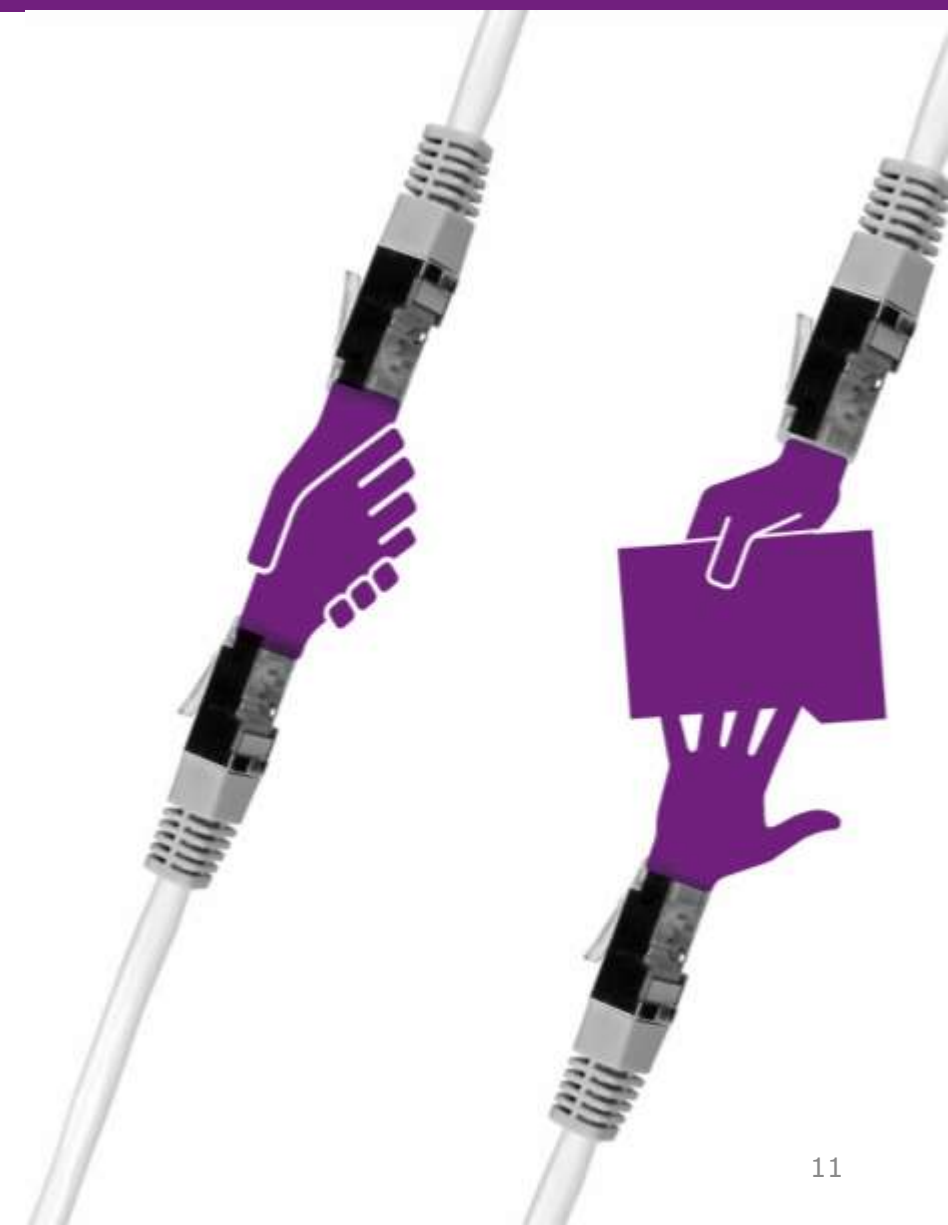
1. Law and practice around E-signatures

DIFC



E-signatures cannot be used for the following:

- Powers of attorney
- Declarations of trust (with the exception of implied, constructive and resulting trusts) and any provision in the DIFC Trust Law 2005
- Wills, codicils or testamentary trusts
- Affidavits or Affirmations as evidence in court proceedings
- Transactions involving the sale, purchase, lease (for a term of more than 10 years) and other disposition of immovable property and the registration of other rights relating to immovable property



1. Law and practice around E-signatures

DIFC



- Validity
- Attribution and Effect
- Admissibility as Evidence
- Court Documents



1. Law and practice around E-signatures

English law contracts



- E-signatures are recognised as valid provided there is intention – eIDAS Regulation (EU), UK's Electronic Communications Act 2000, case law
- Definition: "*Data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign*" (eIDAS Regulation)
- Can be 'simplified', 'qualified' or 'advanced'
- Recognised as admissible evidence
- Limitations to electronic signing for certain documents – eg Deeds (Note – Law Commission guidance)
- Overseas companies must comply with local jurisdictional requirements for execution

1. Law and practice around E-signatures

Practical considerations



- Reminder: A signature is not always required to form a legally binding contract
- Type of E-Signature
- Contractual principles
- Evidence of Intention
- Review of contractual arrangements



A hand is pointing at a digital screen displaying various data visualizations. The screen shows a pie chart on the left, a bar graph in the upper middle, and a table with columns labeled 'DATE', 'MD', 'A', and 'NO' in the lower middle. The background is a dark blue gradient with a bokeh effect.

2. Remote Notary Public and Court Services

2. Remote Notary Public Services

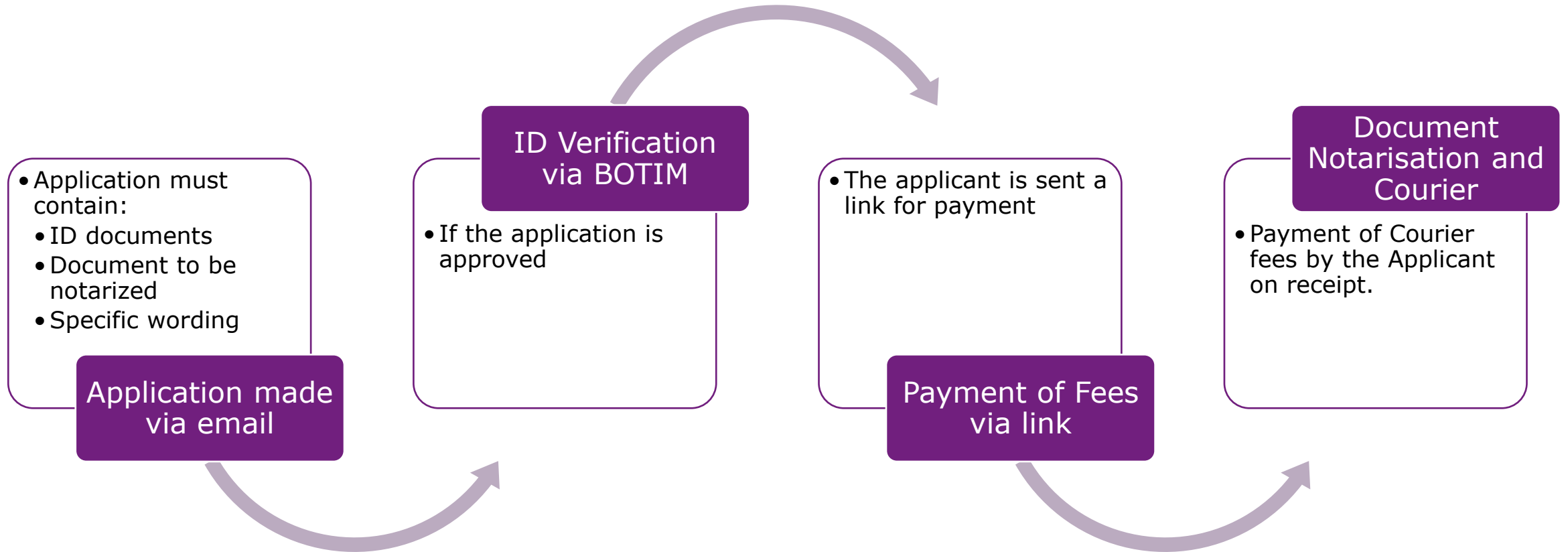
Remote services as of 29 March 2020



- Effective until 09 April 2020, subject to further notice.
- Remote services provided include the notarization of :
 - Power of Attorney
 - Acknowledgments
 - Legal Notice
 - Civil Companies memorandum of association and addendums
 - Local Agency Services Agreement
- Applications related to Commercial Companies' memorandum of Association and addendums have ceased, and are referred back to the DED.

2. Remote Notary Public Services

Remote Notarisation Process



"I the undersigned declare with my full legal capacity and through video communication, using BOTIM, my consent on all what is sated in this application and I sign accordingly."



2. Remote Court Services

- **Dubai Courts:**
 - All hearings before the Court of First Instance, Court of Appeal, and Court of Cassation, scheduled from 22 March 2020 are postponed, to resume starting 16 April 2020.
 - Court of Urgent Matters remain open to applications. Decisions to be issued online. Subject to any adjournment, submissions are also to be made via the Dubai Courts smart applications and online platforms.
- **DIFC:**
 - Effective 17 March 2020, the DIFC Courts have been operating on a fully remote basis, with Courts and Registry offices physically closed until 26 April 2020 (until further notice)
- **Abu Dhabi:**
 - Hearings moved to online platforms.
 - Two month suspension on:
 - the execution procedures for civil and commercial execution cases.
 - all execution measures for civil cases currently active; this includes debtor imprisonment, bank account attachments, as well as the as the seizure of vehicles, stocks and real estate



Feedback from GCs



Any Questions?



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Nasser Ali Khasawneh

Partner, Co-Head of Global TMT and Chairman – Middle East

T: +97 1 43 89 70 03

M: +971506553198

nasserkhasawneh@eversheds-sutherland.com

Shibani Kapur

Senior Associate

T: +97 1 43 89 70 90

M: +971563442792

shibanikapur2@eversheds-sutherland.com

Maria Mazzawi

Senior Associate

T: +97 1 43 89 70 29

M: +971563442786

mariamazzawi@eversheds-sutherland.com