

# The Validity of Electronic Signatures

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One of the major hurdles for the legal profession during this unprecedented period is having to rely on business practices which arguably have not kept up with advances in technology.

In practice, handwritten signatures are required for the conclusion of most agreements and transactions. The national lockdown has imposed strict restrictions on the movement of people making it increasingly difficult to obtain handwritten signatures on documents. The use of electronic signatures arguably offers a practical solution to these challenges.

The COVID-19 pandemic has highlighted the need for legal practitioners to encourage the use of eSignatures in practice as a method of executing agreements. The Electronic Communications and Transactions Act 25 of 2002 provides a legislative framework for the regulation of electronic communications and transactions.

In terms of the ECTA eSignatures are afforded the same legal status as handwritten signatures. An eSignature is defined in section 1 as "data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature." The ECTA provides for the signature of documents by way of an ordinary electronic signature (OES) or advanced electronic signature (AES).

An eSignature may be used for most transactions unless the law prohibits the use of eSignatures; or the parties to the transaction agree on another method of signature; or the law requires that an AES be used. Electronic signatures may be used as a method of verification for a number of documents such as commercial and personal consumer agreements, debit order authorisations, employment contracts and cession agreements.

The ECTA expressly provides in section 4(4) that eSignatures cannot be used to verify the following documents:-

1. An agreement for the sale of immovable property;
2. Wills and codicils;
3. Deeds and long-term leases for a period of more than 20 years;
4. Bills of exchange.

The security concerns surrounding eSignatures are minimal given that technological advancements have made it possible to add additional layers of authentication to ensure the validity of eSignatures. As we enter uncharted territory, the upcoming challenges force us to re-evaluate the traditional ways of doing business and discover innovative ways to ensure that business continues as usual.



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