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In South Africa, e-commerce, and more specifically e-signatures, are governed by the Electronic Communications and Transactions Act, 2002 (ECTA).

Thanks to ECTA, our law recognises that:

- a data message, like an email, SMS or any other electronic document, has the same legal effect as a fax, letter or other hard copy document; and
- an electronic signature, like a digital, scanned or advanced electronic signature has the same legal effect as an original signature on a hard copy document.

In terms of ECTA, any document, with the exception of those documents mentioned below, can be signed electronically.

The type of e-signature to be used (digital or advanced) is determined by law or by the signatories themselves and, provided it meets the requirements for a valid digital or advanced e-signature, as set out in ECTA, these e-signatures will be given due evidential weight in any legal proceedings.

The great thing about advanced e-signatures in our law, is that when a document is signed using an advanced e-signature, that document is presumed to have been signed properly. This means that any person disputing the validity of that signature will have to prove it in court.

E-xceptions to e-signatures

Unfortunately, as mentioned above, there are certain exceptions to electronic documents and signatures in our law. In terms of ECTA, the following documents will not be accepted in electronic format and cannot be signed electronically:

- an agreement for the sale of immovable property, as provided for in the Alienation of Land Act, 1981;
- a long-term lease of immovable property in excess of 20 years;
- the execution of a bill of exchange, such as a cheque, governed by the Bills of Exchange Act, 1964; and

- the execution, retention and presentation of a will or codicil, as governed by the Wills Act, 1953.

Although ECTA does not specifically deal with documents that need to be registered in any of the Deeds Registries in South Africa, the Chief Registrar of Deeds resolved, in 2006, that e-signatures will not be accepted for any act of registration in a Deeds Registry in South Africa, as only originally signed documents are permissible.

Therefore, any documents that need to be registered in any of the Deeds Registries of South Africa will also not be accepted in electronic format and cannot be signed electronically.

Can we go paperless?

It is clear that our law on electronic transaction and e-signatures have developed significantly over the past decade. E-commerce is booming and electronic documents and e-signatures are starting to feature more and more during transactions. But does this mean that we will be giving those originals and hard copies the boot and move into a paperless paradise anytime soon?

Probably not. Perhaps in a few years' time, if our deeds registration system has gone electronic and we no longer have any exceptions to electronic documents and e-signatures, the answer to this question will be different. But for now it seems that originals and hard copy documents still have their place in our law, and they won't be leaving us just yet.

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