

## E-signatures in the time of COVID-19

2020 April 21

In these unprecedented times with almost half the planet on some form of lockdown, businesses across the globe are looking for practical solutions to complete transactions.

With signatures required for most contracts, businesses are now considering how and when contracts traditionally signed in wet ink (i.e., an original handwritten signature in ink on a sheet of paper) may be signed electronically with an e-signature.

An electronic signature can take the form of either a normal electronic or digital signature or an advanced electronic signature.

- **Digital signature:** an electronic substitute for a manual signature, which serves the same functions and provides the same level of protection. A digital signature can only be created by using special software.
- **Advanced electronic signature:** a specific form of digital signature created by a computer program that contains and encrypts your personal details and then inserts them in the relevant electronic document. The software required to create a digital signature must be accredited by the South African Accreditation Authority.

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 recognizes 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 e-signature, like a digital, scanned, or advanced electronic signature, has the same legal effect as an original wet ink signature on a hard copy document.

In terms of ECTA, any document, bar some specific exceptions, can be signed electronically. Where parties to a transaction have not stipulated the type of electronic signature required, the e-signature will be binding when a method is used to identify the person signing and to indicate the person's approval of the information communicated and, having regard to all the relevant circumstances at the time the method was used, the method was as reliable and appropriate for the purposes for which the information was communicated.

The advantage of an advanced electronic signature under our law, as opposed to ordinary digital signatures, is that when a document is signed using an advanced electronic 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.

## Exceptions to e-signatures

There are certain exceptions to electronic documents and signatures in our law; the following documents will not be accepted in electronic format and cannot be signed electronically:

- where the parties to a document agree e-signatures cannot be used
- 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 check, governed by the Bills of Exchange Act 1964
- the execution, retention, and presentation of a will or codicil, as governed by the Wills Act 1953
- the license of intellectual property, IP transfers, and employee invention agreements (Patents Act 1978, the Design Act 1993, the Trade Marks Act 1993, and the Copyright Act 1978)

ECTA does not specifically deal with documents that need to be registered in any of the Deeds Registries in South Africa. However, the Office of the Chief Registrar of Deeds is currently working on the implementation of e-commerce principles in the deeds registration process in order to facilitate an Electronic Deeds Registration System (e-DRS). The Electronic Deeds Registration Systems Act No. 19 of 2019 (EDRSA) was signed into law on 2 October 2019. EDRSA authorizes the Chief Registrar of Deeds to implement a system for electronic registration of deeds and although not yet in place, this is a positive step towards digitization.

It is clear that our law on electronic transactions and e-signatures has developed significantly over the past decade. In our current economic climate, it is comforting for businesses to know that electronic documents and e-signatures are an available tool for business continuity.

## Contacts



**Laurie Hammond**  
Partner, Johannesburg  
T +27 11 052 6110  
[laurie.hammond@hoganlovells.com](mailto:laurie.hammond@hoganlovells.com)



**Kyle Changlrayn**  
Associate, Johannesburg  
T +27 11 052 6114  
[kyle.changlrayn@hoganlovells.com](mailto:kyle.changlrayn@hoganlovells.com)

## [www.hoganlovells.com](http://www.hoganlovells.com)

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see [www.hoganlovells.com](http://www.hoganlovells.com).

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2020. All rights reserved.