

ARE ELECTRONIC SIGNATURES LEGAL?

Category: Commercial Law

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Digitisation and technology has increasingly pushed businesses into implementing automated business processes while creating a paperless environment. Time delays due to documents having to be printed, signed, scanned and emailed/faxed just scream inefficiency in the modern business world.

As a natural progression for business end-to-end efficiency, electronic signatures have become increasingly popular, but how legal and binding are they?

The Electronic Communications and Transactions Act, Act 25 of 2002 (“the Act”) defines an electronic signature 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 Act further defines an advanced electronic signature as an “electronic signature which results from a process which has been accredited by the Authority...”

Simply put, an electronic signature is the same and as legal as a written signature on a document as they both signal intent of the person signing. The only difference is that the electronic signature is in the form of an additional piece of data attached to a digital document. The same principle applies, namely the main purpose of the signature is the intention to authenticate.

This intention can further be found in the use of emails, where courts have found that the electronic communication carries the same legal weight as hardcopy communications and records.

The benefit of the advanced electronic signature over a normal electronic signature is that it identifies the signatory (including date and time) and locks in the data, therefore detecting and highlighting any subsequent alterations of the signed data contained in the document.

Enticed by the great cost-savings, a paperless environment has the benefits of convenience and time-saved, which results in companies increasingly moving to digital correspondence and transactions, with the knowledge that an advanced digital signature greatly reduces the risks involved.