



Has Covid-19 highlighted the need to introduce electronic signatures in everyday business?

A significant percentage of the world today is experiencing some form of lockdown due to Covid-19. A large number of businesses globally have been forced to shut down, either temporarily or permanently. The timely introduction of digital tools prior to the pandemic has safeguarded, to an extent, business continuity for several industries. Following the first shock of the lockdown measures, in their bid to survive, businesses are bound to carry on with their activities even via electronic means. This could mean new opportunities, new projects and new deals for commerce.

Even though we have seen a huge progress in terms of technology development in Cyprus over the last 20 years or so, we have been a bit “old-fashioned” or “traditional” when it comes to the closing of deals; that is, we expect a wet-ink signature on a printed document.

Generally, in Cyprus, a contract will be considered valid if the basic requirements of offer, acceptance and consideration are met. Unless imposed by specific legislation provisions, a signature is not required. However, parties opt to sign agreements and, in many cases, initial the remaining pages, in order to evidence that they agree to be bound by the terms of all of the terms of the agreement.

This note considers the practicality of using electronic signatures for agreements under the law of the Republic of Cyprus.

Legislative framework

The main legislative provision is Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (hereinafter “Regulation 910/2014”), which is directly applicable in the Republic of Cyprus, meaning no further domestic measures are required to transpose same into national legislation.

In addition to Regulation 910/2014, the Republic of Cyprus has enacted “*The Implementation of Regulation (EC) 910/2014 on Electronic Identification and Trust Services for Electronic Commerce in the Internal Market Law of 2018*” (hereinafter “Law 55(I)/2018”) on 13 June 2018.

What is an electronic signature?

Regulation 910/2014 provides for three types of electronic signature, namely: (a) electronic signature; (b) advanced electronic signature; and (c) a qualified electronic signature.

An electronic signature is defined as “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”.

An advanced electronic signature needs to meet the following requirements:



- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory;
- (c) created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and
- (d) linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

A qualified electronic signature is an advanced electronic signature that is created by a qualified electronic signature creation device which is based on a qualified certificate for electronic signatures. This certificate is issued by a qualified trust service provider.

Legal effects of electronic signatures and acceptance in proceedings

Article 25 (1) of Regulation 910/2014 provides that an electronic signature should not be denied legal effect and admissibility as evidence in legal proceeding solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.

Article 25 (2) provides that a qualified electronic signature shall have the equivalent legal effect of a handwritten signature while Article 25 (3) provides for cross-Member State recognition of a qualified electronic signature based on a qualified certificate issued in one Member State.

As far as domestic legislation is concerned, sections 9(1) and 9(2) of Law 55(I)/2018 provides that subject to the provisions of the Evidence Law, an electronic signature as defined in article 3 of Regulation 910/2014, that may be in electronic form or does not meet the requirements for qualified electronic signatures, shall be admissible as evidence in any civil or criminal proceedings before a Court or in any proceeding before an administrative body.

Section 9(3) of Law 55(I)/2018 provides that a qualified electronic signature has the equivalent legal effect of a handwritten signature and section 9(4) provides that irrespective of the provisions of any relevant legislation, the requirement for signatures for procedures before an administrative body are met with a qualified electronic signature.

It is worth noting that the definition of the word “document” was amended in the Evidence Law Cap. 9, as amended, in order to include a specific reference to Regulation 910/2014.

Further considerations

- Dealing with other jurisdictions - Where an agreement is governed by the law of another jurisdiction or where non-Cypriot parties are involved, confirmation of local counsel as to the validity of electronic signatures in the said jurisdiction will be required.
- Corporate issues – Examples include whether a person binding a company via an electronic signature has the authority to do so or having restrictions in the constitutional documents of the company.



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- Security breaches – the use of electronic means always entails a danger of breach of security.
- Counterparties’ sophistication – the application of electronic signatures pre-supposes that counterparties will have the infrastructure and willingness to use them.
- Lack of case-law – No substantial judgments in relation to the use and application of electronic signatures have been issued by the Courts of the Republic of Cyprus. This means that there remains a degree of uncertainty as to the issues that may arise due to the use of electronic signatures and the way the Courts will deal with them
- Originals vs copies – in some cases “original” documents may be requested. The ordinary use of the word “original” pre-supposes the use of a wet-ink signature.

The future

It is hard to say whether businesses will decide to turn to electronic signatures for everyday use. Up until now businesses have opted to use “wet-ink” signature. Nevertheless, the existing conditions provide an increasing likelihood of electronic signatures becoming the norm in business dealings rather than remaining an unused source of potential.

This note provides a general guide to the subject matter and does not constitute legal advice. For any further information on the matter please contact George Taoushanis at info@ldlaw.com.cy

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