

Electronic signatures in lockdown times

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In business, handwritten signatures are required on nearly every document. However, in the wake of the Covid-19 outbreak it has become almost impossible to obtain multiple original handwritten signatures on the same document. But the need to keep the economy going means that we need to find ways to continue to do business and there is in fact law in place in South Africa to help us achieve this.



Source: pixabay.com

A possible solution to this obstacle and new era may be found in the Electronic Communications and Transactions Act 25 2002 (ECTA). The ECTA provides for two types of signatures in electronic form: electronic signatures and advanced electronic signatures.

How they may be used is unpacked below.

Electronic signatures may be used for most transactions unless:

- the law specifically states that they may not be used; or
- the parties to a transaction agree that they may not be used.

Where parties to a transaction have not stipulated the type of electronic signature required, the electronic signature will be binding when:

- a method is used to identify the person 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 reliable and appropriate for the purpose for which the information was communicated.

One can take several steps to ensure that the method of electronic signature in use is reliable and appropriate, including:

- using a dedicated organisation domain name that clearly identifies the company to which the signatory belongs;
- having the signatory send the signed document directly to the recipient, minimising the use of intermediaries;
- ensuring strict compliance with signature formalities that may be specified in the relevant agreement; and
- utilising a service provider in order to authenticate the identity of the signatory as well as the time and date of signature.

Advanced electronic signatures are mandatory where the signature of a person is required by law. The South African Accreditation Authority must accredit the products and services used to create an advanced electronic signature.

Public bodies in South Africa can also issue and file documents in electronic form. While physical access to our courts is currently restricted, new proceedings may be instituted electronically.

Although we are living through unclear and daunting times, South African laws enable businesses to continue despite the uncertainty. As we grapple with the impacts of Covid-19 on businesses and society: the challenges faced may well push us to explore previously undiscovered way of doing business.

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