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Are electronic signatures legal?

Given the current situation faced by South Africa and the rest of the globe, a concern was raised as to whether all agreements and contracts can be signed electronically.

Companies all over the world are starting to return to business as usual and this is something that should be borne in mind. Does an electronic signature affect the validity and legality of the document?

According to the Electronic Communications and Transactions Act of 2002 (ECT Act), an electronic signature is entirely legal and valid.

Where two or more parties enter into an agreement, electronic signing of the documents is sufficient. With reference to Ferdi Verryn's article, '*Vir so 'n transaksie moet jy self teken*', published in *Beeld* on 8 May 2020, the ECT Act excludes the following transactions for electronic signature and still requires a physical signature:

- Contracts regarding the alienation of immovable property. The Alienation of Land Act requires all agreements to be signed on paper.
- Long-term rental agreements in respect of immovable assets exceeding a period of 20 years.
- Signing of a will (testament). Wills and a codicil (addendum) to a will should be signed as a written document in the presence of witnesses.
- The Bills of Exchange Act of 1964 requires that documents such as cheques and pledges be signed in writing.

What is deemed to be an electronic signature?

The ECT Act defines an electronic signature as data that is attached to, incorporated by or logically clustered to and integrated into other data and being used to replace the physical signature of a signatory.

The real question now is whether documents required to be signed in the presence of a Commissioner of Oaths can be signed electronically. As per the ECT Act of 2002, an advanced electronic signature is required when signing such a document. The ECT Act defines an advanced electronic signature as "an electronic signature which results from a process which has been accredited by the Authority as provided for in section 37 of the Act".

The Authority, as per the definition in the ECT Act, is the .za Domain Name Authority.

All documents sent from a domain registered with the Authority as signed documents are in fact deemed to be legally signed. This is the reason why the *Protection of Personal Information (POPI) Act* and *Consumer Protection Act* are of utmost importance, ensuring that the electronic collection, processing, storage and sharing of information are conducted in a responsible manner.

Examples of personal information for an individual could include the following:

- Identity and/or passport number
- Date of birth and age
- Phone number(s)
- Online/instant messaging identifiers
- Email address(es)
- Gender, race and ethnic origin
- Physical address

The POPI Act does not only apply to individuals but also to companies and other legal entities. These entities are seen as "data subjects". As a consumer, you have rights and protection, but you also have the responsibility to protect other entities' and individuals' personal information.

This will hopefully assist companies with their day-to-day operations and rule out the concerns of legality and validity with regard to signing agreements and other documentation.

SERR Synergy assists businesses in ensuring that physical information and cybersecurity risks are identified and managed to maintain the confidentiality of data in compliance with POPI, PAIA and CPA.

About the Author: Nicole Stipp joined SERR Synergy in April 2018 and is a Corporate Legal Advisor at our Pretoria Branch. She currently focuses on advising and implementing ownership structures for companies nationally.