

## INSIGHTS: Signing Legal Documents Remotely

Most of us are, by now, accustomed to the concept of social distancing and its importance in curbing the spread of COVID-19. These restrictions on in-person movement, whether legally mandated or voluntarily adopted, mean that many documents will need to be signed remotely to preserve business continuity.

We explore the options for electronic signing under Singapore law, when it is appropriate and how it can be done.

### (I) What kind of legal documents can be signed electronically?

Generally, Singapore law permits documents such as contracts and declarations to be signed electronically, except the following:

- Wills;
- Negotiable instruments, documents of title, bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money;
- Documents dealing with the creation, performance or enforcement of an indenture, declaration of trust or power of attorney, with the exception of implied, constructive and resulting trusts;
- Any contract for the sale or other disposition of immovable property such as land, or any interest in such property;
- The conveyance of immovable property or the transfer of any interest in immovable property;
- If the signatory is a company, documents which are not permitted to be signed electronically under the company's constitution;
- Documents which are not permitted to be signed electronically under applicable laws of other countries. Such foreign laws may apply if the signatory is a foreign entity or the document is governed by foreign law, or the document is likely to be used in foreign proceedings;
- Documents which must be signed before a Notary Public, as documents cannot be notarised remotely.

Assignments and licences of intellectual property do not fall within these exceptions, and therefore can be signed electronically.

For documents which may legally be signed electronically, it is also relevant to consider if there are other requirements attached to the signing; for example, whether any witnesses or counter-signatories are required, or whether the signature needs to be in any particular format. Crucially, one should also consider if the form and type of electronic document and electronic signature used provide sufficient identity authentication, security, and message integrity, to prevent evidentiary challenges.

## **(II) What qualifies as an electronic signature?**

In essence, a signature functions as a means of identifying a person and indicating the person's intentions in respect of the document signed. As long as these functions are fulfilled, various different forms can qualify as "signatures".

Examples of electronic signatures are: a digital image of a person's handwritten signature, a typed name in plain font, or an email attached to a document and stating that the sender of the email agrees to the contents of that document. The appropriate type of electronic signature will depend on the technology available to the signatory, the nature of the document to be signed, the transaction value and consequently, the degree of identity authentication, security, and message integrity required.

## **(III) How can an electronic signature be applied to a document?**

The manner of signing will depend on the form of electronic signature to be used, and the form of the document to be signed.

If the electronic signature consists of a digital image or typed name, it can simply be inserted into the appropriate signature block in the document in soft copy. However, this method of signing a document is not very secure and is open to evidentiary challenge. To mitigate this, where the signature is made on an electronic copy of a document, the signed document should be saved in a non-editable format. Security controls may also be applied to a PDF document to render it non-editable, or the document can be converted into a non-editable image file format. This minimises but does not remove the risk of identity challenges, or unauthorised changes being made to the document after it has been signed.

There is also the option of using commercially available electronic signature solutions. These solutions offer built-in security features that can be used to identify the person signing and to indicate that person's intention when affixing his or her electronic signature in a document. These features should be reviewed and their risk level assessed before use. For high value transactions, it is advisable for all parties to use secure digital signatures issued by a trusted third party, where the identity of the user is verified in person by the trusted third party and matched against official IDs before the digital signature is issued to the user. These secure solutions also provide message integrity by encrypting the document with the digital signature such that it cannot be easily altered.

There are inherent risks with using electronic signatures and electronic records, given the ease with which electronic signatures may be used and electronic records tampered with or modified. As mentioned above, the value and risk profile of a document or transaction should be considered in deciding whether electronic signatures should be used, and if so, the degree of identity authentication, security and message integrity required should also be evaluated before selecting the type of electronic signature to be used.

## **(IV) Can a document be signed electronically if a witness is required?**

Some documents require a third party to witness the signatory applying his or her signature to the document. Ideally, the witness should be physically present when the signatory signs the document. However, if this is not possible, the witness may view the signing using real-time streaming technology, such as a video call. Steps should be taken to ensure that the witness can confirm the signatory's identity and that the document

the signatory signs is the same document that the witness later signs. It is also advisable to retain proof of the witness' presence at the signing, for instance, recording the video call together with a date and time stamp.

For documents that need to be signed before a Commissioner for Oaths in Singapore, the Commissioner may witness the signing over a real-time video stream, provided that he or she is able to confirm the signatory's identity and that the document the signatory signs is the same document that the Commissioner later signs. It should be noted that while commissioning over video conferencing is permitted, notarisation is not.

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