



Common misperceptions about e-signatures in South Africa

For centuries, there has been a reliance on manuscript signatures (ink-based or wet signatures applied to paper) to conclude agreements, seal documents and add the element of trust to a certain extent between contracting parties. As time passed, several technological advancements have been made to simplify life, streamline contractual negotiations and conclusions, as well as to minimise the impact on the environment. One of these technological advancements, presents itself in a simple form that is already used in emails and electronic documents – electronic signatures.

Several companies, governmental departments and organisations have implemented electronic signatures to sign off documents and replace paper-based operations. The technology for creating digital signatures is available and has proven to be trusted by not only private companies such as banks, but also governmental organisations such as the Department of Home Affairs, with the roll-out of the national identity cards. In the same breath, several companies are hesitant to use electronic signatures and still utilise manuscript signatures on documents. These are some of the common misperceptions relating to electronic signatures in South Africa:

- Once an electronic document is signed and sent via email, the recipient receives a copy and not the original.
- Only advanced electronic signatures (AES) are considered to be valid electronic signatures according to South African legislation.
- An electronic signature will not have the same evidentiary weight as a paper-based signature in court.

- Not adjusting company agreements to accommodate the provisions of the ECT Act will have no effect on the company.
- Agreeing to terms and conditions in email with a signature in the form of a name and surname is not "in writing and signed".
- Black on white (ink on paper) is the only legal way to sign documents.

In an age where everything else is digitalised, it is difficult to comprehend why there is still an insistence on paper, if the paper production industry has such a severe impact on the environment. The utilisation of electronic signatures, is not a new phenomenon and has been in practice internationally and specifically in South Africa, for over a decade. The Electronic Communications and Transactions Act 25 of 2002 defines, legalizes and regulates electronic signatures, as well as electronic documents in South Africa.

Our legal consultants can guide your organisation in terms of the Electronic Communications and Transactions Act as well as how to implement and incorporate electronic signatures. We offer the following services in this regard:

- Website legal compliance assessments
- Training on the Electronic Communications and Transactions Act (ECT) and e-signatures
- Guidance and legal opinions on the ECT Act and electronic signatures
- Implementation of electronic signatures
- Revision of agreements to incorporate the ECT Act