

Guidance note for E-Sign UK Ltd. on electronic signatures

This guidance note considers the execution contracts and deeds by way of electronic signatures.

What is an electronic signature?

The Electronic Signatures Regulations 2002 (SI 2002/318) define "electronic signature" as "data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication". This is very broadly worded and electronic signatures can range from a click on a website button, typing one's name in an email or on a website, a scanned PDF of one's signature which is inserted as a picture file into a document or a fully encrypted digital signature applied through an external website.

Do they work?

Section 7 of the Electronic Communications Act 2000 confirms that electronic signatures are admissible in legal proceedings to determine authenticity. It is, however, for the court to decide what weight to give to each signature on a case by case basis.

The courts have taken a fairly relaxed and pragmatic approach in several reported cases. In *Metha v J Pereira Fernandes SA* [2006] EWHC 813, the court was of the view that the requirement for there to be a written and signed memorandum of the terms of a guarantee could be satisfied by an email in which the name of the guarantor had been simply typed into the body of the email. In *Golden Ocean Group Ltd v Salgaocar Mining Industries PVT Ltd* [2012] EWCA Civ 265, the Court of Appeal found an enforceable guarantee in a chain of emails.

Different types of document

There are still uncertainties about certain classes of document. It should not therefore be assumed that an electronic signature will be effective for all documents.

Contracts (general)

Given the court's decision in the *Metha v J Pereira Fernandes* case, it should be acceptable in most cases for a contract to be executed by way of an electronic signature. The exception will be in the case of registrable documents, where a "wet-ink" signature will often still be required (see below).

Contracts (land)

Subject to registration requirements (see below) and provided the other requirements of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (the **LP(MP)A**) are satisfied, contracts for the sale or disposition of an interest in land should be validly "signed" using an electronic signature.

An early decision in the Court of Appeal (prior to the Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002) held that for the purposes of section 2(3) of the LP(MP)A, each party to the agreement had to write his name on the document in his own handwriting and that a party causing his name to be printed or typed at the head of a document was not sufficient signature of the contract within the meaning of 2(3) (*Firstpost Homes Limited v Johnson* [1995] 1 WLR 1567).

More recently, however, the High Court has taken a more relaxed view. In *Green (Liquidator of Stealth Construction Ltd) v Ireland* [2011] EWHC 1305, the requirement was apparently satisfied by a chain of emails.

Deeds

At present, the accepted view is that deeds should continue to be signed in "wet ink". There are particular issues in relation to deeds and it is not clear to what extent the English courts would recognise a deed as being validly executed by the application of an electronic signature, or how one would satisfy any requirement for a witness. To date, there have not been any cases reported on the use of electronic signatures on deeds. Interestingly, Government plans to introduce online completion and signature of Lasting Powers of Attorney have not materialised in part because of difficulties with overcoming the requirement for witnessing.

Other issues

Registrable documents

- Documents needing to be filed at the Land Registry: Land Registry Practice Guide 8 requires manual signature "in ink or some other indelible medium".
- Documents to be submitted to Companies House: hard copy forms must be signed in black ink. Many Companies House forms can now be filed online, and for those Companies House imposes its own authentication requirements.
- Documents to be filed at the Intellectual Property Office: hard copy forms must be signed in blue or black ink. Many IPO forms can now be filed online, and for those the IPO imposes its own authentication requirements.

Signature writing machines

The use of a signature writing machine was considered by the High Court in *Ramsay v Love* [2015] EWHC 65. In that case, a signature applied by a signature writing machine was sufficient to create a "deed" of guarantee, although the judge also pointed out that the requirement for witnessing was not argued before the court and furthermore the document was in substance a contract for indemnity so the question of attestation was not relevant to the case. The case in fact turned on Mr Love's authority to use the signature writing machine on the document in question. For now, while a simple contract should be fine to be executed using a signature writing machine, we advise caution on their use on deeds.

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