

E-(xecuting) documents and closing transactions in the covid-19 era

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The COVID-19 pandemic has instigated major challenges for businesses worldwide and has greatly disrupted international trade as many transactions have been put on hold. Even businesses with disaster planning policies in place have been adversely affected by the extent of the restrictions imposed worldwide.

Many companies have been forced to close their offices, or, have almost all their employees working remotely. This has raised the question, inter alia, of how to execute documents and to what extent it is possible to legally execute documents electronically; since the traditional way of conducting business and the closing of transactions via the signing of documents has become very difficult or impossible in certain occasions.

There are legally acceptable options available to those businesses for which the closing of a deal in the circumstances is a matter of “life or death.” In lieu of placing an ink signature, an obvious alternative is the use of electronic signatures, (or “e-signatures”). Had more businesses worldwide embraced technology to a higher degree, they would have been more prepared to deal with the consequences of the pandemic and, no doubt, the consequences would have been less severe on them.

Lack of trust in the digital environment, especially due to the lack of certainty on the legality of a contract, makes everyone reluctant to carry out transactions electronically and to adopt technologically advanced services.

During the Covid-19 lockdown our firm has been involved in the closing of a few major transactions, involving some of the most prominent multinational corporations situated in different jurisdictions, as if there were no restrictions in place.

The EU Regulation No. 910/2014 and the relevant legal framework in Cyprus

Building trust in the online environment is key to both businesses and individuals in order for them to agree to carry out transactions electronically. For this reason, the European Union has legislated for the use of electronic signatures. The relevant legal framework within the EU governing the matter is Regulation 910/2014 which came into force on 1 July 2016, repealing the Electronic Signatures Directive 1999/93/EC. In Cyprus, the relevant legislation is Law 55(I)/2018¹, which has repealed Law 188(I)2004, as amended, which in turn implemented, almost word for word, Directive 1999/93/EC.

The provisions of the Regulation are mandatory and fully adopted in all EU member states, including Cyprus of course, and they take precedent over any conflicting domestic laws. The EU’s intent by introducing the Regulation was to enable convenient and secure electronic transactions across EU borders for citizens, businesses, and public sector institutions.

It is not the purpose of this article to analyze and discuss in detail the various provisions of the Regulation but to highlight that, it is not the end of the world, and that there may be alternative solutions for those corporations which are experiencing difficulties in conducting their businesses or in closing transactions.

¹ *The Law (55(I)2018), on the enforcement REGULATION (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market*



What is an 'electronic signature'

The Regulation defines 'electronic signatures', as “*data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign.*” In other words, it is an electronic form of signature that a signer can apply to a document as evidence of their acceptance or approval. The term is quite broad as it would encompass, for example, the use of scanning equipment to create a digital image of a person's signature, with this image being reproduced at the end of a word-processed document.

The Regulation also provides definitions for '*advanced electronic signature*² and '*qualified electronic signature*³ which are considered even more secure. An 'advanced electronic signature' means an electronic signature which meets the requirements set out in Article 26, i.e. it is uniquely linked to the signatory, (b) it is capable of identifying the signatory, (c) it is created using means that the signatory can maintain under his control and (d) it is linked to the dated to which it relates in such a manner that any subsequent change of the date is detectable; whereas, a 'qualified electronic signature' means an advanced electronic signature that is created by a qualified electronic signature creation device, and which is based on a qualified certificate for electronic signatures.

Admissibility and legal effect of electronic signatures

By virtue of article 25 of the Regulation an electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it was made in electronic form, or, that it does not meet the requirements for qualified electronic signatures. One could argue that the intention of the EU is obvious, i.e. to build trust and urge more businesses to embrace the digital environment and carry out transactions electronically.

Alike, section 9(1) of the Law provides that, subject to the provision of the Evidence Law, an electronic signature, as defined in article 3 of the Regulation 910/2014 which may not meet all the requirements of a qualified electronic signature, may still be admissible in any criminal or civil proceedings pending before the Cyprus courts. This means that a Cyprus Court may exercise its discretion whether to accept an electronic signature, depending of course on the merits of the case and the nature of the matter in dispute. A qualified electronic signature, however, shall have the equivalent legal effect of a handwritten signature according to section 9(3) of the Law, which is in line with art. 25(2) of the Regulation.

It is worth mentioning that the definition of 'document' in Cyprus Law on Evidence (Cap. 9) has been amended⁴ so that it includes also electronic documents bearing electronic signatures, electronic seals, electronic time stamps etc., as defined in the Regulation 910/2014.

Similarly, in order to be in full conformity with article 27 of the Regulation, the Companies Law (Cap 113) has been amended⁵ so that every form, certificate, minutes or other document delivered, or sent, to the Registrar of Companies for filing or, issued by the Registrar of Companies, as the case

² Article 3.11 of the Regulation.

³ Article 3.12 of the Regulation.

⁴ By Law 53(I)/2018

⁵ By Law 145(I) of 2011



may be, and requiring affirmation, certification or signature pursuant to the provisions of this Law, may be signed by an electronic method (section 37A(1) of Cap 113).

The above confirms that the legal framework in Cyprus is fully in line with European standards and that the intention is to give full effect to electronic signatures.

Conclusion

It is not anticipated that electronic signatures will ever replace handwritten signatures. However, they do pave the way in processing secure electronic transactions that currently require both handwritten signature and the physical presence of the individual. Importantly, they do provide a reliable, secure and legally acceptable solution in the current difficult circumstances. An added bonus is that electronic signatures will bring significant reductions in administrative costs in the public sector and, they will simplify complex transactions which otherwise require physical presence and a great deal of paperwork.

It is clear that, in light of the circumstances caused by the pandemic, more businesses are being forced get up to speed, adapt, and embrace technology in order to survive these difficult times.

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