

To sign or to 'E'-sign? That is the Question

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Undoubtedly and unsurprisingly, the COVID-19 pandemic has affected businesses and individuals in a variety of ways. One aspect, which has been discussed to a great extent, is the use of electronic signatures in Cyprus and the legal implications of their use.

As a result of the impact of the COVID-19 pandemic, businesses and individuals have had to seek alternative methods for legally executing documents which were essential for their survival. This was due to the movement restrictions, put in place by governments to combat the deadly virus, substantially limiting the ability of individuals to be physically present for such purposes.

The use of electronic signatures is an acceptable and valid option with legal effect for signing documents in Cyprus (subject to certain exceptions). However, due to the traditional and rather obsolete handwritten ink signature approach in Cyprus, many are unaware of either the existence of electronic signatures, or, the extent to which they are legally valid.

Following the footprint left by the COVID-19 pandemic, our firm has been requested to opine, on numerous occasions, as to the validity and the legal effect of using electronic signatures to sign certain documents in accordance with Cyprus Law.

The three types of electronic signatures

Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the “EU eIDAS Regulation”), the majority of which has been adopted by and is read in conjunction with Law N. 55(I)/2018 (the “Law”), provides for three types of electronic signatures:

1. **Basic Electronic Signature (BES)** – There are no specific requirements for such signatures; they can take the form of a click of an ‘I accept’ box or a typed name or a scanned signature at the end of an email or contract.
2. **Advanced Electronic Signature (AES)** – Such signatures must meet certain requirements whereby they can be (a) uniquely linked to the signatory, (b) capable of identifying the signatory, (c) created using means that the signatory can maintain under his/her sole control, and (d) linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.
3. **Qualified Electronic Signature (QES)** – These are Advanced Electronic Signatures based on a qualified certificate issued by a Qualified Trust Service Provider (QTSP) and created through a qualified electronic signature creation device. Such a signature provides additional protection controls over an AES as it has the same effect as a handwritten signature. Some may say that it is even better than a handwritten signature due to its high standards of verification.

The EU eIDAS Regulation introduces the use of:

- a) **electronic seals** which help prevent both intentional and accidental change to the document after it was signed, meaning that all parties remain secure in knowing that what they sign in the present will remain verifiably unchanged also in the future,
- b) **electronic time stamps,**
- c) **electronic documents, and**
- d) **certificate services for website authentication and electronic identification.**



Advantages of an electronic signature

The provisions of the EU eIDAS Regulation are directly applicable to all Member States of the EU, therefore it supersedes any conflicting domestic laws. This allows for the possibility of cross-border signings with no time being spent on printing, signing, posting or combining counterparts.

Additionally, the principle of mutual recognition between Member States of the EU, as laid out in Article 6 of the EU eIDAS Regulation for the purposes of cross-border authentication, means, in general terms, that where an individual or legal entity can be electronically identified in one Member State for an online service, in accordance with the provisions EU eIDAS Regulation on electronic identification, that individual or legal entity will also be recognised in another Member State for that online service.

Furthermore, while the use of electronic signatures is a quicker and more practical option for signing documents, it is also considered to be cheaper and more eco-friendly due to the fact that it supports paperless transition (no printing, filing, shredding).

As a result of the COVID-19 pandemic, many self-employed persons and employees of businesses were forced to work remotely. If, following the pandemic, working from home becomes the new norm, then there may be an inclination towards electronically signing documents remotely and this method may even be preferred over having to travel to and physically attend a document signing.

Admissibility and legal validity of electronic signatures

Pursuant to article 25 of the EU eIDAS Regulation and section 9 of the Law, it is emphasised that an electronic signature will not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form, or, that it does not meet the requirements for qualified electronic signatures which have the equivalent legal effect of a handwritten signature. Thus, where any electronic signature is concerned, other than a qualified electronic signature, in the event of a dispute which is handled by the Courts in Cyprus it will be at the discretion of the Court to decide whether to grant the electronic signature legal effect. This will always be decided on a case-by-case basis and will be dependent on the particular facts of each case. Where a person is claiming that an electronic signature on a document is not genuine, the burden of proof will lie with that person. If the burden of proof shifts to the person relying on the electronic signature, the Court will have to be convinced beyond any doubt that the signature was indeed placed on the document with the intention of being bound to the document.

Next steps for e-signing in Cyprus to become a natural alternative

Cyprus has already begun to implement changes which will bring the country closer to meeting the standards of the European legal framework on electronic signatures. Amendments have been made to the Evidence Law, Cap.9 and to the Companies Law, Cap 113. The Evidence Law, Cap 9 now extends the definition of 'document' to include electronic documents bearing electronic signatures, seals, time stamps etc., as defined in the EU eIDAS Regulation, whereas the Companies Law, Cap 113 now provides 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 may be, and requiring affirmation, certification or signature, may be signed electronically, to comply with article 27 of the EU eIDAS Regulation.



The impact of the Covid-19 pandemic has resulted in Cyprus, realising both the importance of, and the need for, the use of electronic signatures. Consequently, new reforms on electronic identification, which is the 'key' to electronic signatures (QES), have been prepared and presented to the Council of Ministers. The proposed reforms are currently with the Law Office of the Republic for legal review, exemplifying the intention of Cyprus to give full effect to electronic signatures. For now, electronic signatures will last for one year and then, upon the adoption of amendments for electronic identification, they will be valid for three years and can be cancelled at any time.

This identification can be obtained through an individual's bank, and the bank will be responsible for processing this 'key' through the QTSP. Alternatively, it may be applied for directly via the QTSP. The government has already signed a Memorandum of Understanding with commercial banks that will enable and promote electronic signatures in the banking sector.

At present, the sole QTSP currently registered in Cyprus is JCC Payment Services Ltd and, there are just two other Greek Companies, registered in Europe, carrying out activities in Cyprus: Byte Computer AE and ADACOM S.A. However, with the passing of the new legislation it is likely that these companies will face competition.

Obstacles and complications

As echoed in Article 2 of the EU eIDAS Regulation, in terms of the application of electronic signatures, neither the Law nor the EU eIDAS Regulation cover aspects relating to the conclusion and validity of contracts or other legal or procedural obligations with respect to requirements on form. Equally, they do not affect rules and limits governing the use of documents. Aspects in relation to the conclusion and validity of documents are mainly governed by our Contracts Law, Cap. 149.

To this effect an issue worth considering arises, which is, whether, in the case of contracts or other documents that require witness signing, electronic signatures can be placed in the presence of witnesses. Additionally, can witnessing be done via webcam? This is something which is not currently permitted by law. Such contracts or documents include, among others: property lease agreements exceeding a period of one-year, certain marriage contracts, wills, promissory notes, loan and credit agreements, pledge agreements concerning a pledge over shares of a Cyprus company.

As is usual with the introduction of anything new, implementation of electronic identification and electronic signatures will require an introductory period to allow Cypriot operations to adapt to their use. It will also take time for judicial disputes to emerge on these matters.

Additionally, heavy dependence on electronic means will bring about a higher demand for cyber security which may include a requirement for the use of electronic passports. Steps such as the creation of an electronic passport are likely to meet with resistance from some sectors of society, since, whilst they are superficially equivalent to a biometric identity card, they include continuously updated real data about an individual.



Conclusion

It is clear that certain issues remain to be resolved in order for Cyprus to fully modernise and allow the use of electronic signatures for most, if not all, documents. The recent developments are promising and we have much to look forward to. Passing of the amendments for electronic identification will mark the beginning of a new era and provide the answer to the question in the title of this article.

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