

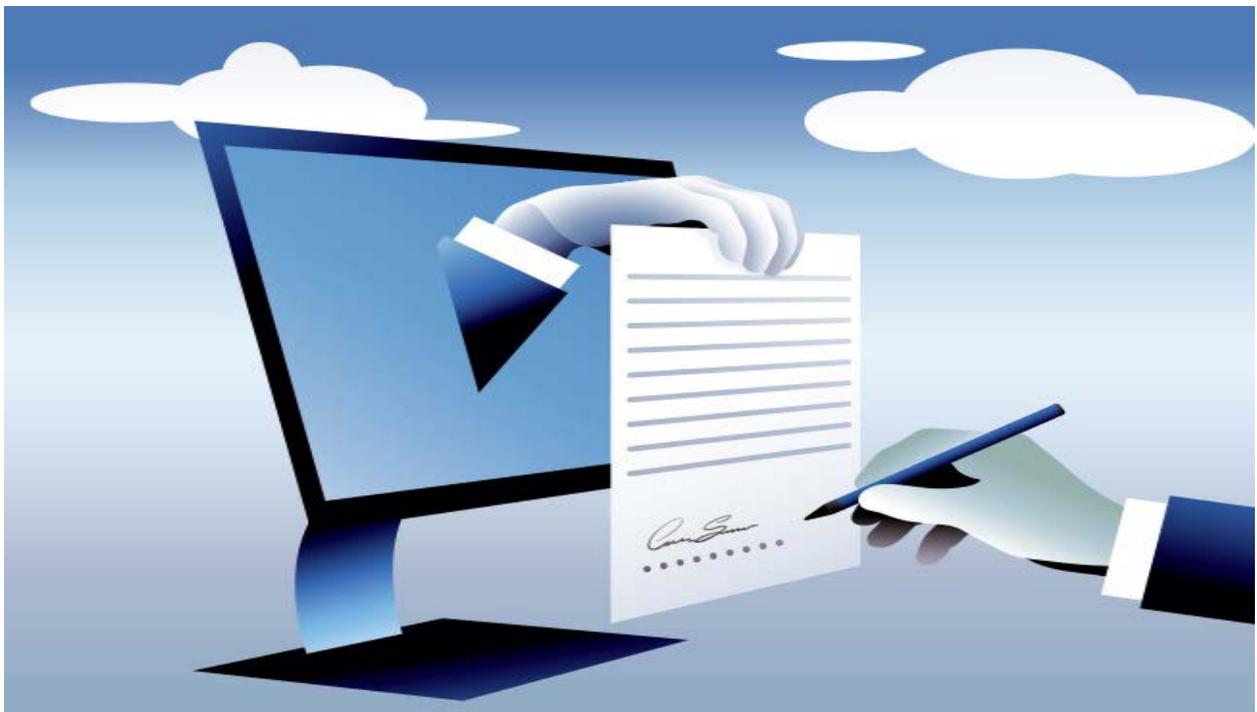
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# CLIENT NOTE

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## SIGNING DOCUMENTS VIRTUALLY: LEGALLY POSSIBLE OR NOT?

*“Until contract is signed, nothing is real”*



### OVERVIEW

The global pandemic crisis, started in December 2019, continues shaking up the economy and raises issues for businesses by forcing them to evolve, changing established practices and challenging economic actors to rapidly adapt.

While people are isolated and mainly working remotely, as recurring question pops up: is it legal in Armenia to sign contracts and other legal documents electronically and will those be binding? This note is an attempt to give some answers.

The emergency situation and measures being put in place for the purposes of addressing the spread of COVID-19 include, *inter alia*, doing business remotely. This, recently, has raised many questions among businesses and organizations whether various documents traditionally signed in “wet ink” may be executed electronically. If yes, then is it possible to enforce the legality and compliance of such documents?

Relevant factors are being used worldwide to evaluate the legality of electronic signatures, which include the governing law of the document, the type of document to be signed, the form of electronic signature to be used, etc.

### HOW IS THE ISSUE RESOLVED WORLDWIDE?



Executing (signing) a document electronically via different applications became a widespread practice since it ensures fast and secure signing and offers flexibility to choose the most efficient option for each business. Number of applications exist in order to facilitate this process, including *DocuSign, PandaDoc, Adobe Sign, Hello Sign, SignEasy* and etc. These applications usually use a wide range of techniques to authenticate and verify the

signer’s identity and authenticity of such signature.

To regulate this process, various legal acts have been adopted in different countries aiming to provide legal framework for the acceptability, legal value and use of electronic signatures. Such legal acts include, for example, Electronic Signatures in Global and National Commerce Act (ESIGN, 2000) and the Uniform Electronic Transactions Act (UETA, 1999) regulating the legality of e-documents in the US; EU Regulation No 910/2014 On Electronic Identification and Trust Services For Electronic Transactions in the Internal Market, also known as eIDAS, regulating electronic signature processes for EU countries.

As for Armenian regulations, the Armenian Civil Code specifically provides by Article 450 (3) that:

*“an agreement may be concluded in a written form upon signature of parties through drawing up a single document, as well as through exchanging information or a communication (document) via means of postal, telegraphic, facsimile, telephone, **electronic or other means of communication which make it possible to confirm its authenticity and accurately define that it comes from the contracting party. When concluding an agreement via means of electronic communication (unless other requirements regarding the form of such contract are provided by law), an electronic***

*document not protected by an electronic digital signature shall have the same legal effect as any document signed by hand by person.”*

Analysis of the mentioned legal acts, as well as Armenian regulations leads us to the conclusion that a document or signature cannot be denied legal effect or enforceability solely because it is made in electronic form.

## WHAT TO PAY ATTENTION TO?

In order to establish the legality and enforceability of the document signed electronically, as well to protect the legal interests of the parties involved, at least the following requirements/characteristics should be respected:

1. **clear intent of contracting party (parties) to enter into the contract and to sign it electronically:** this requirement means that the intention of the party (parties) to be bound by the rights and obligations, as well as any other condition of the document should be easily provable. Also, the “agreement” of the party (parties) to execute the document electronically should be clear and definite.
2. **clear attribution of the signature to the signatory:** according to this requirement, it should be clearly established, provable or visible that the signature used on the document belongs to the contracting party, comes from the contracting party (for example by an email or other means of communication). Moreover, such signature does not necessarily mean the physical act of signing the document, but also, such other action of the contracting party clearly indicating its willingness/agreement to enter into the contractual relations is qualified as electronic signature (for example, the use of such notions as “I agree”, “I accept”, “I understand and confirm”).
3. **accurate representation of the document signed and retention of records of the signature process.**

At the same time, it is important to note that various courts (US, EU, UK, etc. ) accept documents signed by applications enabling use of electronic signature as evidence, however such admissibility of documents signed (executed) electronically as evidence is a relatively new experience for Armenian courts since no judicial precedents exist in this regard. This is why admissibility of such documents by Armenian courts is subject to careful consideration on case by case basis. Nevertheless, one should also note that for the past years number of financial institutions have been extending loans to borrowers without “wet ink” signed contracts, and Armenian courts have not doubted so far the legality of those instruments.

## DIGITAL SIGNATURE vs. ELECTRONIC SIGNATURE

Nonetheless, use of electronic signature for a specific list of documents, requiring a higher level of “protection” is not enough to ensure legal force of those documents. These usually include the types of documents needing an extra layer of verification/notarization, or documents, which are subject to a greater risk of falsified signature.

For these cases, another concept in a form of “**digital signature**” has been developed in order to facilitate digital signing (execution) of the mentioned types of documents. However, the list of documents to be signed with digital signatures varies from state to state.

### *What is a digital signature and what does Armenian legislation have to say about this?*

A digital signature can be qualified as the replacement of “wet ink” signature in the virtual world. It is a sequence of encrypted symbols attached to an electronic document, enabling identification of the signer and is issued by a state authority or other certified organization. For example, *DocuSign*, by being one of the most widely used applications for electronic signature, is qualified in certain jurisdictions (e.g. US, EU members) as a certifying authority of digital signature.

Armenia is also not falling behind in the development of special legal acts addressing the issues of digital signatures and has a specific law since 2004 providing a legal framework for the use of such signatures, as well as e-documents.

The Law of RA on “Electronic Documents and Electronic Digital Signature” provides a definition for digital signature as “*obtention of signature-creation data and a cryptographic data modification of the given electronic document presented in a unique sequence of symbols in electronic form, which is attached or logically associated with an electronic document and which is used to identify the signatory, as well as to protect the electronic document from forgery and distortion.*”

## EXCEPTIONS

The above-mentioned law defines that all services to be received electronically from state and local self-government authorities can be requested via the use of digital signature (the obtention procedure of which is presented below). At the same time, there are specific cases established by other laws, which provide for the obligation of parties to use digital signature, in case of electronic execution of the document. For example, the Armenian Law “On Protection of Personal Data” provides that the consent of the provider of the personal data, in case of electronic execution, **should be signed via electronic digital signature.**

This means that the use of applications providing the possibility for electronic signatures are possible unless contracting parties are dealing with public authorities and other organizations (e.g. commercial banks, Central Depository, etc.), which, based on their internal acts, accept only documents signed by digital electronic signature, or, unless the requirement of electronic digital signature for certain type of document is set by applicable law.

In Armenia, the electronic digital signature is provided by “EKENG” closed joint-stock company, which is the only digital signature certification center in Armenia. Obtention of the digital signature in Armenia takes several days and costs an annual fee of AMD 3,000. In addition, in order to sign a document via digital signature, a specific software - an ID card reader, shall be used by the signer.

The world is moving forward fast, and nowadays it is possible to even notarize an electronically signed document via e-notaries. Unfortunately, this is not possible in Armenia at this point.

## WHAT TO DO?



For the purposes of signing document using an electronic signature, please:

1. Make sure, that the governing law does not require a digital signature for execution of a specific document.
2. Make sure, that there is no other/specific condition set out by agreement(s) between the parties.
3. Make sure that at least the requirements mentioned above are met while executing the document. However, as these requirements may vary on case-by-case basis, we advise you to get your lawyer’s opinion related to the specific case, in order to establish that, at least:
  - a. the contracting party (parties) is (are) aware that the document is executed (signed) electronically, is (are) aware of all the conditions set out in the document and has (have) given its explicit consent to be bound thereby;
  - b. the consent given by the contracting party (parties) is indeed authentic and attributable to the contracting party;
  - c. the executed (signed) document has been accurately communicated between the parties, as well as the records of such communication are dully retained;

- d. such other requirements, which may be set by the applicable law or prior arrangements between the parties are met.

In short, the simple question is “*are electronic signatures, including those made by respective applications, legally binding and enforceable?*”. And the short and simple answer is *yes*, as long as certain requirements, analyzed and referred to above, are met.

As a final note, we believe that in order to alleviate the current crisis situation caused by COVID-19 and to ensure a normal working process for remote businesses, there is a need to make legislative changes and adopt a respective decision, which will provide the possibility of accepting documents, signed by any application allowing the use of electronic signature, by all Armenian state authorities, as well as private sector companies.

**NOTE:** This material is for general information only and is not intended to provide legal advice

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