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## ELECTRONIC SIGNATURES

These days, electronic signatures are more commonly used and applied with regards to agreements/contracts being concluded electronically. To fully understand the concept of electronic signatures and when their use is acceptable, we look at the effect and purpose of the Electronic Communications and Transactions Act 25 of 2002 (hereafter referred to as "ECTA") specifically relating to electronic signatures, as well as the two different types of electronic signatures most commonly utilised today.

### ***Electronic signatures as defined by the Act***

The ECTA currently provides for two categories of electronic signatures:

1. **'Ordinary Electronic Signature' ("OES")** which in terms of Section 1 of the ECTA is defined as "...data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature." To understand the latter we look at the definition of data, defined in Section 1 of the ECTA as "... electronic representations of information in any form..."
2. **'Advanced Electronic Signatures' ("AES")** are a special type of signature created by the ECTA which are required in the event where the law stipulates that the agreement must be in writing and signed (and is not specifically excluded in the ECTA). In terms of Section 1 of the ECTA an AES is defined as "... an electronic signature which results from a process which has been accredited by the Authority as provided for in Section 37." Such accreditation process is done through the South African Accreditation Authority. As a result of the AES being certified and the certifying authority having to authenticate the identity of the person signing, face-to-face, this form of signature is much more reliable than that of an OES.

### **Exclusions in terms of the ECTA**

In terms of Section 4(4), there are four transactions that cannot be concluded by way of an OES or AES:

- **Alienation of Immovable Property**

The sale of an immovable property needs to be in writing and signed by the parties to the agreement. Therefore, agreements of sale in terms of which a property is alienated can not be concluded by way of an OES or an AES.



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- **Long Leases**

Similarly long term leases of immovable property in excess of 20 years can not be concluded by way of an OES and AES..

- **Wills and Codicils**

In terms of the Wills Act 7 of 1953 (“the Wills Act”), it is stipulated that a Will (or Codicil) should be in writing, signed by the testator/trix and witnessed. Accordingly, electronic signatures whether it be an OES or an AES, are not acceptable and will not comply with the specific requirements as per the Wills Act.

- **Bills of Exchange**

Bills of exchange are often referred to as negotiable instruments, which include bills of exchange, cheques and promissory notes. The Bills of Exchange Act 34 of 1964 requires these documents to be in writing and signed. Therefore, electronic signatures are not acceptable on Bills of Exchange.

### **Conclusion**

The ECTA has made way for organisations to better their services and deliver such services more time and cost effectively, as transactions are now mostly paperless and can be agreed to by way of a simple click of a button. The ECTA provides useful guidance on when and how electronic signatures can be used and in which instances their use is acceptable. With careful planning and being familiar with the relevant sections of the ECTA, it is possible to use electronic signatures for most commercial and service related transactions that consumers will deal with daily.



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