



CRISIS PRACTICE

# Coronavirus

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King & Spalding

## COVID-19 Update: Electronic Signatures in the Middle East

Working remotely and travel restrictions as a result of the Covid-19 outbreak present new challenges to traditional ways of conducting business, particularly when it comes to execution of documents and concluding contracts remotely. However, signing documents electronically is generally permitted by law in the region and is becoming increasingly more common. This briefing aims to provide a high-level overview of when e-signatures are permitted, or when the parties will need to take additional steps to satisfy themselves of additional execution formalities that may apply.

Concluding a contract electronically generally includes a person typing his or her name into a contract or into an email containing the terms of a contract, clicking “I accept” on a website page, inserting scanned manuscript or digital signatures to a document, making use of e-signing platforms, or electronically typing a signature into a document.

### ELECTRONIC SIGNATURES UNDER UAE LAW

Electronic signatures in the UAE are governed under the Federal Law No. 1 of 2006 on Electronic Transactions and E-Commerce (the **E-commerce Law**), which provides that:

- contracts can be concluded electronically;
- contracts may not be denied their validity or enforceability solely because they are concluded in one or several electronic messages;
- reliance upon electronic signatures needs to be reasonable in the circumstances. Relevant considerations include:
  - steps taken by the parties to verify the authenticity of the signature;
  - custom and practice between the contracting parties and/or in the industry concerned; and
  - any other relevant factor(s).



The E-commerce Law does not apply to certain contracts for which “wet ink” signatures and/or other formalities remain necessary. These include:

- transactions relating to personal law such as marriage, divorce and wills;
- title deeds of real estate;
- negotiable instruments;
- transactions concerning the sale and purchase of real estate, its disposition and rental for periods in excess of ten years and the registration of any other rights related to it; and
- any document required by law before to be signed before a notary public.

The civil code of the UAE also recognises that contracts can, save where the law prescribes otherwise, be concluded in writing or orally and without any particular formalities. Printed contracts, “wet ink” signatures, stamps and other common formalities are therefore generally not essential to evidence a binding agreement.

### ELECTRONIC SIGNATURES UNDER KSA LAW

Electronic transactions in the KSA are governed by the Electronic Transaction Regulations No. 8/M of 8/3/1428H (corresponding to 27 March 2007) and its Implementing Regulations (the **Electronic Transactions Law**). Similar to the UAE, printed contracts, “wet ink” signatures, stamps and other common formalities are generally not essential to evidence a binding agreement in the KSA.

The Electronic Transactions Law expressly recognises that an offer and acceptance of contracts may be expressed by electronic means and such contracts shall be deemed valid and enforceable if concluded in accordance with the Electronic Transactions Law, which prescribes certain requirements on how documents signed electronically are saved on any relevant server/platform (i.e. for 10 years and in an unmodified form), as well as any relevant emails or documents that relate to the electronic signature (e.g. the email under which the document signed electronically was sent from the signatory, or the email authorising the appending of the electronic signature) also being saved on a server/platform. If these requirements in relation to electronic storage cannot be complied with (for example if your internal server’s data storage does not comply with this), it would be prudent (for evidential purposes) for the parties to follow any electronic signature of a contract with the exchange of “wet ink” originals, and/or having the signature witnessed in accordance with the requirements of *Shariah* principles. This is particularly relevant if the documents may be submitted before a court process, where the evidential burden will often be more stringent.

The Electronic Transactions Law does not apply to transactions relating to personal affairs (such as marriage, divorce and wills) and title deeds relating to the real estate transactions, which will need to follow certain formalities or be signed in wet-ink. For instance, real estate transactions and the issuance of title deeds will need to be signed in front of a notary public in the KSA.

### ELECTRONIC SIGNATURES FOR CONTRACTS GOVERNED BY FOREIGN LAW

It is common practice for contracts in the Middle East to be governed by a foreign law. In those circumstances admissibility of e-signatures will be affected by that choice of law. English law, by way of example, adopts a pragmatic approach on e-signatures and, provided any other formalities (such as agreements being in writing and formalities relating to execution (e.g. in the case of deeds signing in front of a witness)) are complied with, most contracts can be signed electronically. However, if the contract relates to land rights, guarantees, promissory notes etc., this will require additional steps to be undertaken (as mandated under English statute) and specific advice should be sought.



## OTHER CONSIDERATIONS

E-signatures are not a substitute for good diligence and parties should remain conscious of the need to execute contracts in accordance with the laws applicable in the country of their incorporation and their own internal rules. In this regard, parties should:

- review the articles of association and any shareholders' agreement for any restrictions which would otherwise limit the use of e-signatures;
- consider if additional execution formalities are required (e.g. a witness or two authorised signatories being required in the case of a deed) and how this will be satisfied;
- consider if the document needs to be filed with a public authority (e.g. a local land authority), which may require documents to be signed in front of a notary public in wet-ink (although it is worthwhile testing with the relevant authority/notary if any alternative arrangements can be made);
- consider if the execution is by a foreign party and whether additional formalities may need to be complied with based on that parties' country of incorporation;
- consider if the document relates to litigation or other action, such as enforcement, which may need to take place outside of the UAE/KSA where the court in the relevant jurisdiction may not accept electronic signatures in relation to such proceedings; and
- assess cybersecurity/fraud-risk and have adequate protections in place. E-signing platforms can be very useful when people are less mobile however, parties should be alert to IT risks.

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