

THE LEGAL VALIDITY OF DOCUMENTS SIGNED ELECTRONICALLY:

In South Africa electronic signatures are regulated by both common law and the Electronic Communications and Transactions Act, 25 of 2002 (“ECTA”).

In terms of our common law, a signature must meet the following requirements in order to be valid:

1. The name or mark of the person signing must appear on the document;
2. The person signing must have applied it themselves; and
3. The person signing must have intended to sign the document.

The ECTA defines an electronic signature as being “*data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature.*” Therefore, in South Africa, provided that the common law requirements are met, an electronic signature is not without legal force and effect merely because it is in electronic form.

Importantly, the ECTA expressly excludes the following contracts, which therefore cannot be concluded electronically:

1. Agreements for the sale of immovable property;
2. Long term leases of land exceeding 20 years;
3. Signing of a Will; and
4. Bills of Exchange.

In the case of *Spring Forest Trading CC v Wilberry (Pty) Ltd t/a Ecowash & Another* the SCA had to determine whether an Agreement of Lease had been validly cancelled by way of email. The salient facts of the case were that a Lessee sent an email to its Landlord cancelling a lease, and the Landlord subsequently responded by email confirming the cancellation. The Landlord later however denied the cancellation, and argued that as there was a non-variation clause in the Lease Agreement, any cancellation would have to be reduced to writing and signed by both parties. The court ultimately held that the names of the lessor and the lessee at the bottom of their emails were:

1. Intended to serve as signatures;
2. Constituted “data” which was logically associated with the data in the body of the emails; and
3. Identified the parties.

In the circumstances both the common law and the requirements of the ECTA had been met, and the Lease Agreement was held to have been validly cancelled.

From the above it is clear that parties should exercise caution when communicating via email, especially when such emails relate directly to the cancellation or variation of the terms of a contract.