

## ELECTRONIC SIGNATURE

### What is an electronic signature?

Generally speaking, an electronic signature (or e-signature) is a technical process logically associated with a document which two (or more) individuals or organizations (the signatories) agree to rely on in order to express their intent to sign such document. Three components are therefore necessary: a document, a signatory and an e-signature tool. While the tool most commonly used for handwritten signatures is a simple pen, electronic signature tools are typically more complex.

From a regulatory standpoint, an electronic signature is a broad category that encompasses many types (or levels) of electronic signatures.

Depending on the country it is used in, there are differences in purpose, legal acceptance, technical implementation and cultural acceptance of electronic signatures. In particular, e-signature requirements tend to vary significantly between most "civil law" countries (including the European Union and many countries in South America and Asia), and most "common law" countries (such as the United States, Canada and Australia). Civil law countries typically support a "tiered" approach including higher levels of signature often called digital or qualified electronic signatures (typically required for specific types of contracts), as opposed to common law jurisdictions which are typically more technology-neutral.



In addition, some industries (such as healthcare or banking) and documents (such as marriage or adoption contracts) may require a higher level of e-signature.

### What are the laws and regulations in Nigeria?

Electronic signatures are legally recognized and enforceable under Nigerian law.

The Cybercrimes Act provides that electronic signatures are binding for the purchase of goods and other transactions. There can also be sanctions in the event that an electronic signature has been forged, misrepresented or falsified.

In addition, under the Evidence Act, if a signature is required for a document to be valid, an electronically signed document can meet those requirements. Documents with electronic signatures are allowed to be entered as evidence in court. If the validity of an electronic signature is questioned, evidence can be provided "in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person" (Evidence Act, Laws of the Federation of Nigeria, 2011, Sec. 93). Electronic signatures can only be admissible as evidence in court if the record also satisfies the requirement of computer-generated evidence in the Evidence Act:

- The computer which produced the document was used regularly during the relevant period to store or process the same kind of information that's in the document (i.e. normal processes were followed when creating the electronic record);
- The computer which produced the document also stored other information of the same kind or of the kind from which the document was derived (i.e. the computer was used to store similar/related types of information);
- The computer was operating correctly through the material period. If there was a period where the computer wasn't working properly, the non-operation didn't compromise the content of the record;
- The information was reproduced or derived from information provided in the normal course of business activities.



### Is an electronic signature valid in Nigeria?

Yes. HR related documents can be signed electronically in Nigeria. Documents that have been signed electronically are valid and admissible in court, as long as they meet the authentication provisions under the Evidence Act. Employers may want to consider including an Electronic Documents Transmissions (EDT) clause in contracts to enable the use of electronic signatures as well as the electronic transfer of documents.

Note that in certain cases it may not be possible to use electronic signatures with a regulatory authority. The use of an electronic signature with a regulatory authority may require certification by the courts or notarization from a notary public.

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