

Admissibility of electronic signatures in legal proceedings in Cyprus



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Litigation, Cyprus

The rapid development and expansion of electronic commerce has forced the European Union to ensure that electronic signatures receive the necessary legal recognition. The EU Electronic Signatures Directive⁽¹⁾ is designed to ensure the free movement of electronic signatures and supporting products within the European Union. The legal framework in Cyprus is fully in line with EU standards since the directive was transposed into domestic law by the Electronic Signatures and Related Matters Law 2004,⁽²⁾ which reproduced the directive almost verbatim. The fact that the directive was implemented almost word-for-word into the law of Cyprus leaves little doubt as to the country's legislative intentions.

The electronic signatures law provides, among other things, the legal framework regulating electronic signatures and their legal recognition. It does not cover aspects relating to the conclusion and validity of contracts – these are dealt with in the Contracts Law.⁽³⁾

The electronic signatures law gives a broad definition of 'electronic signature' as data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

Article 4(2) of the electronic signatures law clearly sets out the legal status to be afforded to electronic signatures. An electronic signature is not denied legal effectiveness and admissibility as evidence in legal proceedings solely on the grounds that it is:

- in electronic form;
- based on a qualified certificate;
- based on a qualified certificate issued by an accredited certification service provider; or
- created by a secure signature creation device.

As the electronic signatures law allows contracts to be concluded in electronic form, the decision of what weight to attach to an electronic signature is ultimately for a court to decide; of course, this is always decided on a case-by-case basis and is dependent on the particular facts of each case. The starting point of the electronic signatures law is positive in nature and dictates that an electronic signature can be admissible in court proceedings. The burden of proof lies with the person who claims that the electronic signature is not genuine.

Although there is no reported domestic case law on the matter, the fact that the courts have consistently shown their readiness to adopt new legal trends and commercial standards indicates that they will likely take a positive approach to electronic signatures.

The wording of Article 4(2) of the electronic signatures law should provide sufficient comfort as it is clear that the intention of the legislature was to give effect to electronic signatures and grant them a status equal to that of ink signatures.

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Endnotes

(1) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a community framework for electronic signatures.

(2) Law 188(I) of 2004, as amended.

(3) Cap 149.

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