



Contracts concluded between parties who are absent, electronic signatures in light of the COVID-19 outbreak

KPMG Legal Tóásó Law Firm

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Difficulties



Solutions



Contract contained in separate documents



Electronic signatures



Electronic private deed



Signing corporate documents by electronic means



Signature via Skype



Use restrictions



Contacts

Difficulties



As a result of the Covid-19 outbreak, the applicability of the provisions on distant contracts and electronic signatures will be of particular importance, since in case of some types of contracts, due to legal obligations, while in others, in order to avoid potential future disputes, in a vast majority of cases, business partners conclude their agreements in writing.

However, during a global epidemic, business partners are unable or unwilling to meet in person to sign a contract.

What can we do in the current difficult situation to keep the business running and to ensure the continuity of business operations?





Solutions



If we would like to avoid personal contact, we have three options:



Concluding a contract in counter-parts

OR



Signing documents by electronic means

OR



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Traditional method



Concluding a paper-form contract in counter-parts

This form of concluding a contract is allowed by the Civil Code.

Section 6:70 (2) of the Civil Code states that:

*„A contract shall also be considered drawn up in writing if the **legal statements of all the parties are not contained in the same document, but such statements of the contracting parties are contained in separate documents and these collectively contain the parties' mutual and concordant intentions.**”*

Thus, under this section, it is possible for the parties to sign the copies of the contract separately and to deliver them to the other contracting parties by post or by any other similar way, so that each contracting party has at least one signed copy from each of the contracting parties.

Effectiveness of distant contracts: The effectiveness of the contract requires **the receipt of the copies of the contract by the other party.** (Therefore, in all cases, it is necessary to verify not only the act of sending (e.g. the posting), but also the receipt thereof (acknowledgment of receipt) by the addressee.)





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Concluding contracts by electronic means



Electronic signatures

It could significantly ease the process in the current situation if the parties have electronic signatures, which can easily replace the lengthy process of paper-based signature of separate copies.

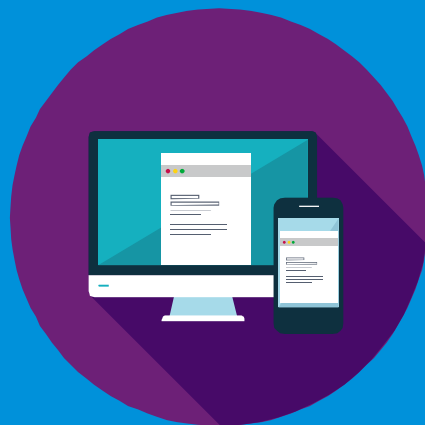
What should we pay attention to in this regard?

Since the entry into force of Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market (“eIDAS Regulation”), the requirements regarding each type of electronic signatures are set at an EU-level.

According to the eIDAS Regulation there are 3 different types of electronic signatures:

- Simple electronic signature,
- Advanced electronic signature, and
- Qualified electronic signature.

If an electronic signature of a service provider fulfils the specific requirements set by the eIDAS Regulation, then it shall be accepted in all EU Member States.





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Concluding contracts by electronic means



Electronic private deed

In all cases where the law requires the form of an unauthenticated private deed for a juridical act, the electronic signature must meet the following requirements:

- Shall be signed with at least an advanced electronic signature; AND
- shall be timestamped.

In cases where the law requires the form of a private deed of full probative value for a juridical act, the electronic signature must meet the following requirements:

- Shall be signed with a qualified electronic signature; AND
- shall be timestamped.

However, it should be taken into account that there are special areas, such as a contract of sale of real estate, for which the parties are required to conclude the contract in the traditional written form and possibly in accordance with other formal requirements laid down by law.



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Signing corporate documents by electronic means



Many people are also affected by the signing of various corporate documents, as the extraordinary court recess does not result in the time limits of company registration courts being suspended. Thus, the indication and application of changes related to corporate and company law, for example, the change of the persons vested with power of representation, appointment of a new managing director or registration of a new address, etc. must be completed within the legal deadlines.

We recommend that you sign corporate documents electronically, as follows:

- Sign with a qualified electronic signature; AND
- have it timestamped.

Signing corporate documents abroad usually requires further legalization after signing (notarization, Apostille), but this can be avoided by using electronic signatures, which can also save significant costs.

It is important to note that signing corporate documents with electronic signature is not the most common way in Hungary. In this context, it is possible that the system of the Court of Registry is not able to display / process the electronic signatures of certain service providers, even though they are appropriate from a legal point of view.



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Signature by the use of Skype



Under the new Act on the professional activities of attorneys-at-law, it is also possible for attorneys to countersign documents (e.g. corporate documents) that were signed by means of an electronic communications network (such as Skype).

Signing via Skype can also replace further legalization (notarization, Apostille), providing a cost-effective alternative.

The length of a Skype video call depends on the amount of documents that need to be signed, but usually, does not take more than 15-20 minutes.

The video call will be recorded and the following events need to take place on record:

- **Identification**: The signatory verifies himself/herself by showing both sides of his/her passport or ID and reading aloud his/her personal information.
- **Content check**: The signatory recites the main points of the document to be signed and declares that the document is in full accordance with his/her will.
- **Signature**: The signatory signs the document right before the camera in a clearly visible manner.



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Please note that if the required document format is not specified by law, the requirement may vary depending on the intended use of the document.

Financial institutions such as banks often request documents required of clients to be made available to the bank in a notarial deed.

The Government, by its Government Decree 45/2020 (III.14), has ordered extraordinary court recess from March 15, 2020, which applies to all notarial procedures, unless provided otherwise, and this circumstance may cause disruptions in the process of notarial deeds being issued. However, at present, notarial deeds are still being drawn up.

If you have any questions regarding the above, or in connection with any other required document, signatures or the adequacy thereof, please contact the experts of KPMG Legal Tóásó Law Firm, whose contact details can be found on the following page.





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