

WORKING FROM HOME – ELECTRONIC SIGNATURES UNDER LUXEMBOURG LAW

The current circumstances force a large part of Luxembourg employees to work from home, which is prompting companies to think about alternative ways to sign and execute documents. This raises the question of whether the use of electronic signatures ("**e-signatures**") is appropriate to remotely sign documents and contracts.

Subject to certain exceptions, private deeds (*actes sous seing privé*) can be signed using e-signatures instead of *wet ink* (i.e. handwritten) signatures. It is worth noting that only natural persons can use e-signatures. Legal entities benefit from other tools such as e-stamps.

On the basis of the eIDAS regulation, the Luxembourg legal framework distinguishes between three types of e-signatures (simple e-signature ("**SES**"), advanced e-signature ("**AES**") and qualified e-signature ("**QES**"), that provide for different levels of security and assurance:

- AES and SES are subject to the conditions that they must (i) identify the author of the act, and (ii) demonstrate the author's adherence to its content, but also (iii) guarantee the integrity of the act (that-is-to-say, to guarantee that the act is the one to which the signatory wanted to subscribe) in order for them to have the same value as a *wet ink* signature.
- QES have the same legal value as *wet ink* signatures and their validity is automatically recognised in all European Union Member States. The use of QES offers the highest level of protection and legal certainty.

Although a judge may not dismiss an e-signature on the sole basis that it is not a QES or a *wet ink* signature, the above e-signatures have different probative values.

The choice of the appropriate e-signature will depend on the factual circumstances and the trade-offs attached to each type of e-signature.

Parties wishing to rely on e-signatures should pay particular attention to:

- whether they can use e-signatures to sign a given document;
- whether the document signed presents cross-border elements; and
- what guarantees are offered by providers of e-signature solutions, especially concerning the legal value of the e-signatures generated through their platform.

Please note that aside from e-signatures, other methods of execution of private deeds exist and are available (such as email execution). Our dedicated specialists are available to assist you with any query you may have regarding the use or validity of e-signatures or any other methods of execution.

Key points:

- Signing with e-signatures is possible.
- There are three types of e-signatures with varying degrees of security.
- Only QES have "automatically" the equivalent legal effect of *wet ink* signatures.

Under Luxembourg law:

Can be signed electronically (not exhaustive list):

- shareholder loans;
- board minutes;
- shareholder meeting minutes (if notarization not required);
- commercial agreements (to the exception of the contracts listed below).

Cannot be signed electronically:

- notarial deeds;
- contracts that create or transfer rights in real estate (except for rental rights);
- contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;
- collateral agreements and guarantees provided by persons acting for purposes that are not part of their professional or commercial activity;
- contracts governed by family law or by the law of succession.

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