



# Electronic signatures in Malaysia.

Legal considerations and recommended best practices—an Adobe/Shearn Delamore white paper.

*Electronic signatures can help transform inefficient paper processes into fully digitized workflows, reducing the time and cost of signing documents, offsetting your company's carbon footprint, and enhancing the security of the processes. Today's global organizations transact business across borders. Electronic signatures are an ideal solution for signing and sending documents to another geographic location quickly and securely.*

The Malaysian government recognizes that the e-commerce legal framework of a nation can play an important role in enabling and facilitating e-commerce transactions within the country and across its borders. Furthermore, it also realizes that with the technology available in today's globalized world, it is common for parties to transactions to not always be located in the same place. Malaysian law has recognized electronic signatures on contracts since 1997—starting with the enactment of the Digital Signature Act 1997 (DSA) and followed later by the Electronic Commerce Act 2006 (ECA), which has been in force for over 12 years. The ECA does not preclude the use of digital signatures in electronic commercial transactions. This allows flexibility and freedom for the companies to choose the form of signature that best suits their preference.

Malaysian law provides that where any law requires a signature of a person on a document, the requirement of the law is fulfilled by an electronic signature. However, the electronic signature must satisfy a number of conditions before it can be relied upon. This white paper provides an overview of the law in Malaysia relating to electronic signatures.

## Digital and electronic signatures.

Many jurisdictions around the world have passed laws recognizing [electronic signatures](#), including Malaysia. Two types of electronic signatures that have been legally recognized in Malaysia as having the same legal status as handwritten signatures are digital signatures and electronic signatures.

Digital signatures have been legally recognized as a valid form of signing documents since the enactment of the DSA in 1997. The ECA was then enacted in 2006 to recognize the legality of electronic signatures for signing documents.

## Digital signing under the DSA.

[Digital signatures](#) are a type of electronic signature that uses an asymmetric cryptosystem that is verified by reference to an encrypted digital ID generated by the signer's private key to identify the signer. A person's digital signature can be verified by comparing the digital ID with the public key in a certificate issued by a licensed certificate authority.

For a digital signature to be valid under the DSA, it must meet the following three requirements:

- The digital signature must be verified by reference to the signer's public key, which must be listed in a valid certificate issued by a licensed certificate authority.
- The signer must affix his or her digital signature to the document to be signed with the intention of signing that document.
- The recipient must have no knowledge or notice that the signer:
  - Has breached his or her legal duties under the DSA as an owner of a digital certificate (for example, by failing to take reasonable care to secure his or her private key)
  - Does not rightfully hold the private key used to affix the digital signature

The licensed certificate authorities in Malaysia are:

- Pos Digicert Sdn Bhd (457608-K)
- MSC Trustgate.com Sdn Bhd (478231-X)
- Telekom Applied Business Sdn Bhd (455343-U)
- Raffcomm Technologies Sdn Bhd (1000449-W)

Currently, there are no recognized foreign certificate authorities in Malaysia.

## Electronic signing under the ECA.

An electronic signature can be comprised of any letters, symbols, characters, or numbers or any combination thereof created in electronic form, attached to or logically associated with an electronic record, and adopted by a person as a signature. For example, a person typing his or her name at the bottom of an email or in the signature box of an online form would be considered an electronic signature.

Electronic signing is legally recognized under the ECA, which was enacted to deal with the latest technological advancements, contribute to business efficacy, and build public and investor confidence in electronic transactions.

Under the ECA, an electronic signature is sufficient to satisfy a requirement for a signature of a person on an electronic document if the person's electronic signature is:

- Attached to or logically associated with the document (for example, by placing the electronic signature at the bottom of a completed online form)
- Sufficient to adequately identify the signer and his or her approval of the document to which the signature relates
- As reliable as is appropriate given the purpose and circumstances for which the signature is required

When considering if an electronic signature is "as reliable as is appropriate," the following factors are relevant:

- Whether the means of creating the signature is linked to, and under the control of, the signer only
- If any change to the e-signature post-signing is detectable

In the case of *Yam Kong Seng & Anor v Yee Weng Kai* [2014] 4 MLJ 478, the Federal Court of Malaysia held that identification of the signer is not a difficult threshold to meet. The traditional function of a signature is to give evidence of identity and to have the signer bound by the signed document. In that case, a simple short message service (SMS) communication was held to fulfil the legal requirement for a signature, as the sender was adequately identified by the telephone number representing the sender of the message.

## E-signatures and government entities.

The Electronic Government Activities Act 2007 (EGA) provides for the legal recognition of electronic messages in dealings between the government and the public. However, the use of electronic messages is not mandatory unless the person consents to the use, provision, or acceptance of the electronic message.

If electronic messages are used in dealings with the government, then a requirement for a person's signature on an electronic message can be fulfilled by using an electronic signature. The requirements for a valid electronic signature under the ECA (as previously discussed) will also apply when using electronic signatures in dealings with the government.

## Documents that cannot be signed electronically.

The ECA specifically excludes the use of electronic signatures for the following documents:

- Powers of attorney
- Wills and codicils
- Trusts
- Negotiable instruments

There is some uncertainty in Malaysia as to whether electronic or digital signatures can be used to sign documents such as share transfer forms or instruments giving effect to any dealing with real property. This issue remains to be tested in the court. Until the issue is clarified, it is generally recommended that such documents be signed using a traditional wet-ink signature.

## Summary.

Malaysia is one of the first countries in the world to have prescriptive legislation governing the use of electronic and digital signature technology. While the use of e-signatures is common in Malaysia, it is recommended that organizations only use electronic or digital signatures for signing documents where this is permitted under the DSA or the ECA.

## Important disclaimer.

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