

eSignatures | Kenya

Electronic signatures, also referred to as digital signatures, and for this newsletter, “eSignatures,” have been common in the present time. eSignatures are convenient compared to the traditional model of signing contracts, documents, or correspondences, which in most cases involve printing, signing, scanning, and emailing it to the other party/ person.

The Republic of Kenya passed a law that enhances the use of technology as an interactive tool, particularly on the appending of signatures, by incorporating the use of eSignatures as a statutorily acknowledged type of signature, which is initially covered under the Kenya Information and Communications Act CAP 411A (411A). The Business Laws (Amendment) Act, 2020 amends the following laws by introducing the definition of an eSignature: Law of Contract Act; Registration of Documents Act CAP 285; Survey Act CAP 299; and Land Registration Act, 2012.

The advanced electronic signature's description, as per 411A as amended in 2009, is a signature that is uniquely linked to the signatory, capable of identifying the signatory, created by means controllable by the signatory, and linked to the data to which it relates.

411A, being the law that extensively addresses eSignatures, it provides that an eSignature is reliable if used for purposes of which it was generated/ communicated, including in any relevant agreement. The reliance on eSignature is if made through a signature-creation device; used, and linked to the signatory only; at the time of signing, it was under the signatory only; any alteration is detectable; **and** used an assurance of the authentication of information, or alteration after signing is detectable.

Regardless of the convenience introduced by the use of eSignatures, it equally presents several challenges, such as fraud, document modification, among others. As a result, it is best for a person relying on eSignatures to keep records of all documents signed using eSignatures.

Further, the Stamp Duty Act is amended to allow the use of the electronic stamp. It means that if there will be seamless Customer Management Systems (CMS) as eCitizen, one can acquire the Stamp Duty stamp electronically with ease.

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