

# Corporate Client Alert

## on electronic contracting in light of the COVID-19

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Recent measures and restrictions regarding the COVID-19 pandemic induce or enforce social distancing. Working from home and social distancing will probably remain part of our everyday life in the weeks and months to come.

To keep the economy going, businesses are seeking alternatives to conventional contracting mechanisms. It seems reasonable to use electronic means to enter into contracts and perform acts in law, but what does electronic contracting actually mean? Is it possible to dispense with conventional (paper-based) signing altogether? Could we replace conventional methods at every step of a transaction?

To help you, we have set out below some key considerations regarding the alternatives that Hungarian law provides for contracting.

### Conclusion of written contracts and alternatives to simultaneous paper-based signing

Hungarian law allows written contract to be signed in counterparts, i.e. a contract is deemed to have been concluded in writing even if it is not written in a single document, but concluded in several counterparts with each party signing the counterpart to be delivered to the other party. The contract enters into force when each party delivers its signed counterpart to the other party. The disadvantage of this method is the higher administrative burden and the additional formalities required. On the other hand, this method may help reduce social interaction, which is advantageous in multi-party contracts or transactions.

### Electronic signing – equivalents of handwritten signatures (Europe)

Another method is to use electronic signatures, which may replace paper-based signing.

There are two main levels of electronic signature: advanced electronic signature (AdES) and qualified electronic signature (QES). The main difference between AdES and QES is the probative force of the document signed electronically. A contract signed with AdES does not have full probative force: it has the same legal effect as a paper-based contract with simple signatures. Consequently, AdES does not replace the presence of witnesses (if required e.g. due to the type of the contract at hand) or signing by the authorized representative of a legal entity in accordance with his/her signature specimen. Therefore, signing with QES seems to be the preferred solution for business purposes.





QES services are provided by so-called trust service providers. QES services are relatively easy to use through the chosen trust service provider's application (some of these are available for online and mobile use). These applications usually provide electronic timestamps as well. Attorneys-at-law can also sign documents with QESs if countersigning is required. When obtaining and registering a QES for a signatory, the trust service provider verifies the contracting party's identity in person. The identification data of an authorized signatory's electronic signature for a legal entity must also be registered with the Companies Registry in order for the relevant statement (e.g., agreement) which is signed electronically, to be considered a statement made on behalf of the given legal entity.

By definition, contracts signed electronically only exist as electronic documents. This means that if the document signed electronically is printed, it loses its electronic nature and the printed copy cannot be considered an original. Therefore, if a counterpart with an electronic signature is printed and signed on paper, such printed copy may only qualify as a counterpart signed by the party printing the electronic copy.

Nevertheless, the scenario can arise when one party intends to sign electronically but the other party does not have an electronic signature. In this case, the parties could enter into the agreement with one party signing electronically and the other party signing a hard copy. The parties could then exchange the documents as counterparts.

## Burdens of electronic contracting

There may be certain steps in transactions when physical interaction cannot be avoided (e.g. endorsement of shares or putting them into escrow, incorporating a contract into a notarial deed, authentication of a signature by the notary, etc.). The parties should evaluate transactions, contracts or documents on a case-by-case basis to determine whether electronic signing is a feasible solution. Further, parties should consider the potential cost and administrative factors of long-term and secure storage of electronic documents.

## Blockchain technology and smart contracts

Concluding smart contracts based on blockchain technology might be another way to replace paper-based signing. However, the novelty of the technology suggests that businesses may be reluctant to use blockchain and the current legal framework might have problems qualifying these contracts as valid and enforceable.

Should you have any questions regarding the alternatives of conventional contracting, please get in touch with the contacts listed with this article or your usual Dentons Budapest relationship manager.

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