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E-CONTRACT



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INTRODUCTION

Contracts and agreements between the parties are important for various personal, business as well as non-business matters, including commercial, investment, technical and service-oriented transactions.

The parties usually prefer to execute the documents in physical format, since they have the opportunity to meet, know, and draw comfort from each other, set the foundation for long-term relations, negotiate the documents face to face, and finalize the documents in person. However, with the evolving business environment, digital era, convenience factor, and the post-COVID period, the focus is divided and, in some cases, shifted to a digital format by entering into an electronic contract (also called digital contracts, online contracts, and cyber contracts) (**e-contracts**). Depending upon the nature of the transactions, the parties also adopt a hybrid approach of entering into physical and e-contracts for different transactions to save time, money, and resources.

In this article, we briefly examine the forms of e-contracts, basic requirements, legal issues in e-contracts, e-signatures, and some key points to be borne in mind to avoid future disputes and legal claims.

DIFFERENT E-CONTRACTS

In all sense traditional contracts and e-contracts are the same, however, an e-contract, as the name suggests, is created, sent, maintained, and produced digitally (or physically). With the e-contract, the execution of such contracts is also done through electronic signatures.

E-contracts can be of different forms.

An e-mail conversation with a clear offer and acceptance can be considered a binding contract between the parties. In *Trimex International FZE vs Vedanta Aluminum Limited*¹, the Hon'ble Supreme Court ignored the argument which said that the business exchanges on e-mail did not certify to form agreements.

E-contracts can also be in the form of online agreements like the Click Wrap or Click Through Agreements², Shrink Wrap Agreements³, Browse Wrap or Web Wrap Agreements⁴ E-Mail Contracts, and E-Commerce Contracts⁵.

The contracts and agreements drafted and subsequently signed digitally also fall under the category of e-contracts.

LEGAL RECOGNITION OF E-CONTRACTS

The Indian Contract Act, 1872 is the principal statute that provides legal sanctity to the contractual arrangements between the parties. In order for a contract to be legally binding besides offer and acceptance, it must possess other essentials of a valid contract such as free consent of the parties, competent parties entering into agreements, payment of lawful

¹ 2010 (2) AWC 1170 (SC)

² Click Wrap requires the user to convey his consent or assent to the terms and conditions governing the licensed usage of the software by clicking "ok" or "I agree" button on the dialog box.

³ Shrink Wrap contract is a license agreement where the terms and conditions of the contract, packaged with products and usage of the product is deemed acceptance of the contract. Such contracts can be generally seen in the case of buying of software products.

⁴ Browse Wrap contract is usually used by websites wherein the continued use of a website by a user is deemed to be acceptance of its revised terms of use and other policies.

⁵ E-commerce contract or online shopping contract is a the digital contract which is used to buy or sell the products from the website online.

consideration, and the presence of the lawful object⁶. The Indian Contract Act does not specifically mandate the use of any way of communicating offers and acceptance. In other words, contracts entered digitally, orally or in writing are subject to the same fundamental principles of the contract law. Hence, although the Indian Contract Act does not specifically recognize the e-contract, it has the same binding and legal power as the traditional contract.

Having said that, the Information Technology Act, 2000 specifically recognizes contracts made using electronic methods. As per the provisions of IT Act⁷, the e-contracts and the physical documents enjoy the same legal standing in the eyes of law and any contract will be considered legitimate if the proposal and acceptance are created, communicated, and repudiated electronically or through digital records.

It should however be noted that the IT Act specifically excludes certain documents, namely, negotiable instruments, power of attorney, trust deeds, Wills, and contracts for the sale or conveyance of immovable property⁸ within its ambit and which are required to be in regular paper form to be held legally valid.

Another statute that recognizes digital contracts is the Indian Evidence Act, 1872 by providing the word evidence a broader interpretation to cover digital information as documentary evidence in a court of law⁹. Not only this, but the Evidence Act prescribes the procedures for verification of digital signatures¹⁰ and provides for a provision for admitting electronic records in the court of law¹¹.

⁶ Chapter I of the Indian Contract Act, 1872

⁷ Section 4 and 10A of the Information Technology Act, 2000

⁸ Schedule I of the Information Technology Act, 2000

⁹ Section 3 of the Indian Evidence Act, 1872

¹⁰ Section 73A of the Indian Evidence Act, 1872

¹¹ Section 65A and 65B of the Indian Evidence Act, 1872

USE OF E-SIGNATURE

Again, the IT Act recognizes two forms of signatures (i) a digital signature which is created by an asymmetric crypto-system and hash function, and (ii) the electronic technique¹², wherein, the holder of an Aadhar card is allotted a unique identification number through which, they can affix their signature electronically through third-party forums. With the objective to provide a wider scope to e-contracts, there was also an amendment to the IT Act to substitute the term digital signature for electronic signature.

There are platforms such as DocuSign, PandaDoc, Adobe Acrobat Sign that offer and provide support for the authentication and e-signing of documents, besides providing a completion certificate which is admissible in a court of law, as proof of the execution process.

CONCLUSION

While e-contracts have enabled the remote execution of contracts, e-signatures are limited to digital signatures and Aadhar-based e-sign. This might have a challenge for Indians residing outside India or non-resident Indians as a party to the cross-border transactions, in case they cannot opt for either of these options. This problem will have to be addressed by suitable amendments to the applicable laws, keeping in mind the laws and requirements of the overseas jurisdictions.

¹² Schedule II of the Information Technology Act, 2000

Since there are specific requirements mandated under laws for the e-contracts, it is advisable that a lawyer is consulted to ensure that the e-contracts are in compliance with the applicable laws and to address issues and challenges which may otherwise go unnoticed. Besides securing the long-term commercial and economic interests of the parties, proper and timely advice will protect parties from damage control exercises, enforceability issues, future disputes, claims, and punishments, including stringent punishments related to cybercrimes under the IT Act.

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