



**BOTLHOLE**  
LAW GROUP

IN ASSOCIATION WITH  
**NEILL ARMSTRONG**  
ATTORNEYS, NOTARIES & CONVEYANCERS  
CORPORATE | CONSULTANCY | LITIGATION | TAX

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# BULLETIN

ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT



## Using electronic signatures in Botswana.

HERE IS WHAT YOU NEED TO KNOW

Through the Maitlamo National ICT Policy, the Government of Botswana conceptualized its commitment to position Botswana for sustained growth in the digital economy which is characterized by the use of information and communications technologies to communicate and transact. The Policy identified the enactment of ICT-enabling legislation as key to participation in this modern economy. Pursuant to this Policy, the Electronic Communications and Transactions Act ("the ECT Act") was enacted to provide for amongst other things, the legal recognition of electronic signatures and their use. The ECT Act and its Regulations came into effect on the 1st of April 2016 and remain so. An electronic signature may indicate a person's intent to contract, accept, consent and/or approve depending on the circumstances just like the wet ink/handwritten signature.

electronic  
signature



digital  
signature

secure electronic  
signature

### **What is an electronic signature?**

Data in electronic form attached to or logically subjoined to an electronic communication, and which can be used to identify the signatory and to indicate consent for the information contained in the said communication.

### **What are the examples of an electronic signatures?**

An electronic signature may be in the form of:

- a scanned image of a handwritten signature;
- a typed name at the end of an email;
- a personal identification number (PIN) entered into a bank ATM; clicking “agree” or “disagree” on an electronic “terms and agreements” contract;
- a handwritten but digitally captured signature made on a touch device, such as a tablet or smartphone (sometimes referred to as a “dynamic signature”);
- a unique identifier based on a asymmetric cryptographic scheme.

### **Which form of electronic signature should you use?**

The parties to a transaction or communication may choose any form of electronic signature to use unless the law prescribes the use of a secure electronic signature.

### **What are secure electronic signatures?**

A secure electronic signature is an electronic signature that is cryptography based and recognized as such by an accredited authentication certification service provider. What is particularly special about a secure electronic signatures is that they guarantee authentication, integrity and non-repudiation, i.e. the signatory cannot deny that they signed.

### **When is a secure electronic signature required?**

In most instances where the law statutorily requires that a document be signed for example:

- Notarizing and certifying documents
- Registration of companies

### **Which entity is accredited to authenticate secure electronic signatures in Botswana?**

LAWtrust Third Party Services (Pty) Ltd

### **In what circumstances does the law prohibit the use of electronic signatures?**

Electronic signatures may not be used in the creation or execution of a will; the creation, performance or enforcement of an indenture, declaration of trust or power of attorney; any contract for the sale or disposition of immovable property, or the sale or disposition of any interest in such property; and the transfer or conveyance of any immovable property or the transfer or conveyance of interest in such property.

### **Are electronic signatures admissible in Court?**

In terms of the Electronic Records (Evidence) Act, electronic signatures are admissible as evidence in court. An electronic signature may be proved in any manner except for secure electronic signatures, which are to be proved in terms of the requirements of the ECT Act.

### **How do you manage the use of electronic signatures within an organization?**

Through the development and implementation of an Electronic Signature Policy.

### **What is the objective of an Electronic Signature Policy?**

To govern and control the use of electronic signatures for official business and to manage the risks of fraud and unauthorized signing.

### **Which issues are addressed in the Electronic Signature Policy?**

- Identifying the types of electronic signatures accepted by the organization and their legal implication;
- outlining the instances where electronic signatures can be used in place of handwritten signatures;
- appointing signing officers;
- setting boundaries for the use of personal electronic signatures for official use or the use of official electronic signatures for personal use amongst other salient terms.

### **Our team's certifications...**

