



YIGAL ARNON & Co.  
LAW FIRM

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## Electronic Signatures as a Tool for Business Continuity

As a result of the global COVID-19 pandemic, businesses have drastically reduced the personnel who are physically present in the workplace in order to comply with emergency laws and public health regulations. Large segments of the workforce are working from home and other locations outside the standard place of work.

As organizations implement business continuity programs, bear in mind that many legal activities that are generally facilitated by means of physical signatures may be performed in accordance with Israeli law by means of electronic signatures. Thus, electronic signatures may be used by companies to continue operations where officeholders or employees are not physically present in the office.

The use of electronic signatures in Israel is regulated by the Electronic Signature Law, 2001 (the “**Electronic Signature Law**”). While the law is not new, the Electronic Signatures Law was amended in 2018 in order to allow for more widespread use of electronic signatures.

Israel has adopted a tiered system with respect to electronic signatures, pursuant to which different types of electronic signatures have different levels of evidentiary weight. The Electronic Signature Law stipulates three types of digital signatures: (a) Electronic Signatures, (b) Secure Electronic Signatures and (d) Certified Electronic Signatures.

### Regular Electronic Signature

A Regular Electronic Signature may, in principle, be used to conclude contracts. Its evidentiary weight will depend significantly on the circumstances. An example of a regular electronic signature is a pdf of a written signature that is inserted in a document.

Depending on the circumstances, a Regular Electronic Signature may suffice for the following types of agreements:

- HR documents including employment contracts, non-disclosure agreements, employee invention agreements and others
- commercial agreements between corporate entities including non-disclosure agreements, purchase orders, order acknowledgements, invoices, other procurement documents, sales agreements, distribution agreements, service agreements and others
- consumer agreements including new retail account opening documents, sales terms, services terms, purchase orders, order confirmations, user manuals, policies and others
- patent, copyright and trademark licenses and assignments, including software license agreements.
- most corporate documents, such as written resolutions of the board of directors of a company



While theoretically in most circumstances a regular electronic signature will suffice for the purposes above, the higher the level of electronic signature used, the more reliable. In addition, business partners as a matter of policy may require a higher level of electronic signature.

Note that the burden of proof shifts slightly where a commercial entity offers goods or services pursuant to a standardized contract and the customer signs by means of an electronic signature. In this particular context, the company offering its standard contract for signature bears the burden of proof of demonstrating that the customer is indeed associated with the digital signature affixed to the contract.

## Secure Electronic Signature

A Secure Electronic Signature is an electronic signature that meets all of the following requirements: (i) it is unique to the owner; (ii) it enables apparent identification of the owner of the signing device; (iii) it is created using a 'signing device' – such as software or smart card that is unique in form and is exclusively controlled by the owner of the signing device; and (iv) it enables identification of any change to the electronic message subsequent to signing. An example of a Secure Electronic Signature is DocuSign or similar solutions.

A Secure Electronic Signature is admissible in any legal proceedings as prima facie evidence that the document was not changed after signature, and that the document was signed by means of the applicable signing device. It is not, however, prima facie evidence of the signor's identity.

Stock option grants, as well as the documents referred to above under 'Regular Electronic Signatures', may be signed by means of Secure Electronic Signatures.

## Certified Electronic Signature

A third class of electronic signature, a Certified Electronic Signature, is a secure electronic signature for which a certification service provider has issued an electronic certificate. Only a Certified Electronic Signature is prima facie evidence that the document was signed by the individual designated as owner of the digital signature. Currently, two companies have been certified as having authority to issue Certified Electronic Signatures- Comsign (<https://www.comsign.co.il/>) and PersonalID (<https://www.personalid.co.il/>).

With respect to wills and certain related documents, where an electronic signature is permitted under the law, only a Certified Electronic Signature will suffice.

Please feel free to contact us with any questions regarding use of electronic signature.

Adv. Yoheved Novogroder Shoshan ([yohevedn@arnon.co.il](mailto:yohevedn@arnon.co.il)) and Adv. Miriam Friedmann ([miriamf@arnon.co.il](mailto:miriamf@arnon.co.il))

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