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LAW FIRM

Client Update – March 2020

## 电子签名作为业务连续性的工具

### Electronic Signatures as a Tool for Business Continuity

#### - English Follows -

由于全球COVID-19疫情流行，为了遵守紧急状态下颁布的法律和公共卫生法规，各家企业已大大减少工作场所的出席人员。大部分劳动力已经在家中和标准工作地点以外的其他地方工作。

有鉴于各组织实施业务连续性的计划，值得注意的是，通常以物理签署进行的法律行动都可以根据以色列法律通过电子签名进行。因此，当职员远端工作时，公司仍可通过电子签名继续操作。

在以色列，电子签名的使用受2001年制定的《电子签名法》约束。为促使大众更广泛地使用电子签名，以色列在2018年对《电子签名法》进行了修订。

以色列对电子签名进行了分级，不同级别的电子签名具有不同的证据权重。《电子签名法》划分出三种类型的数字签名为：

- (一) 电子签名；
- (二) 安全电子签名；和
- (三) 认证电子签名。

#### 常规电子签名

原则上，「常规电子签名」可以用来签订合同。「常规电子签名」的证据权重取决于具体情况。

举例说，以pdf格式插入文档中的书写签名，定质为「常规电子签名」。

根据具体情况，以下类型的协议一般只要求「常规电子签名」：

- 人力资源文件，包括雇佣合同、保密协议、员工发明协议等；
- 企业实体之间的商业协议，包括保密协议、采购订单、订单确认书、发票、其他采购文件、销售协议、分销协议、服务协议等；
- 消费者协议，包括新零售帐户开立文件、销售条款、服务条款、采购订单、订单确认、用户手册、政策等；
- 专利、版权和商标许可和转让文件，包括软件许可协议；
- 大部分公司文件，如董事会书面决议等。

尽管在大多数情况下，常规的电子签名理论上足以满足上述文件的签署要求；但电子签名级别越高，其可靠性也越强。另外，业务合作伙伴可建立内部政策，要求更高级别的电子签名。



值得注意的是，当商业实体根据标准化合同提供商品或服务，且客户通过电子签名签署该合同，举证责任会略有转移。在此特殊情况下，提供该标准签名合同的公司承担证明该数字签名实为该客户签名的举证责任。

## 安全电子签名

「安全电子签名」的要求如下：

- （一）签名为拥有人专有的独特签名；
- （二）能从签名清楚辨认「签名设备」的拥有人；
- （三）该签名是使用「签名设备」（例如签署软件或智能卡）造成的，而该软件或智能卡的操作形式独特，仅由「签名设备」拥有者控制；
- （四）能从签名辨识出签署后电子内容上的任何变化。

举例说，DocuSign 或与其类似的电子解决方案定质为「安全电子签名」。

在任何法律程序，均可以使用「安全电子签名」作为表面证据，以证明该文件在签名后没有被更改，或以证明该文件是通过适用的「签名设备」签名的。不过，「安全电子签名」并非证明签名人身份的表面证据。

股票期权授予，以及本文在「常规电子签名」部分提到的文件，均可以「安全电子签名」签署。

## 认证电子签名

第三级别，即「认证电子签名」，是一种认证服务提供商已为其颁发了电子证书的安全电子签名。只有经过认证的电子签名，才能作为表面证据，以证明该文件已由该数字签名的指定拥有人签署。到目前为止，有两家公司获得认证，并具有颁发「认证电子签名」认可的权限：[Comsign](https://www.comsign.co.il/) (<https://www.comsign.co.il/>) 和 [PersonalID](https://www.personalid.co.il/) (<https://www.personalid.co.il/>)。

至于遗嘱及某些相关文件，如法律上允许电子签名，则只有经过「认证电子签名」签署才足以符合法律要求。

如果您有任何关于使用电子签名的问题，请随时与我们联系，联络人为 Yoheved Novogroder Shoshan 律师 ([yohevedn@arnon.co.il](mailto:yohevedn@arnon.co.il)) 和 Miriam Friedmann 律师 ([miriamf@arnon.co.il](mailto:miriamf@arnon.co.il))。

此文仅用于资讯提供，不应被视为法律建议或法律意见。

中文内容问题欢迎联络：外国法律顾问江日岚 Chaya Kong ([chayak@arnon.co.il](mailto:chayak@arnon.co.il))。

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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)).

The China Practice Group of Yigal Arnon & Co.

Adv. Simon Weintraub ([simonw@arnon.co.il](mailto:simonw@arnon.co.il)), Adv. Daniel Green ([danielg@arnon.co.il](mailto:danielg@arnon.co.il)) and Adv. Micki Shapira ([mickis@arnon.co.il](mailto:mickis@arnon.co.il)).

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