

## **THE CORONAVIRUS LOCK-DOWN: ARE ELECTRONIC SIGNATURES A POSSIBLE SOLUTION UNDER SLOVAK LAW?**

In response to the coronavirus pandemic the Slovak Republic has introduced tough measures restricting social contact. Schools and many retail outlets have been closed. People coming from abroad must be quarantined. As a result, many employees have had to stay at home and work remotely, which has significantly limited the possibility to meet and sign documents in person.

This has raised the question whether the traditional process of document execution may be replaced by electronic means. Despite the fact that legislation governing electronic signatures has been around for quite some time already, the answer is unfortunately still not a straightforward one. This briefing considers the position on electronic signatures under Slovak law and discusses the possibility of having a contract signing executed remotely during these "working-from-home" times.

### **FORMATION OF CONTRACTS UNDER SLOVAK LAW**

Generally, an agreement is not required to be made in writing to be valid under Slovak law. Agreements may be validly entered into orally, electronically or in a physical paper document.

Slovak law usually requires the written form if a higher level of legal certainty is necessary. In the context of business contracting, the most common examples of documents that must be made in writing are agreements on transfer of real estate or ownership interests in a limited liability company or agreements on the sale of a business.

The second reason why the written form might be required is that the parties have themselves so agreed – such as for the purposes of amendments of previously concluded contracts, notices to be served thereunder, etc. Experience shows that in day-to-day commercial dealings, the self-imposed written form requirement may actually be encountered more frequently than that imposed by the law.

### **E-SIGNATURES UNDER SLOVAK LAW**

Where a written form is required, the Slovak Civil Code provides that such form be regarded as maintained if the signatories act by electronic means provided that such means allow for the contents of their actions to be captured and the acting persons to be identified. In any case, the written form is always regarded as maintained under the Slovak Civil Code if the action is captured in an electronic document that is signed by a qualified electronic signature.

On its face the Slovak Civil Code allows for the possibility to execute documents that require the written form, including contracts, electronically, instead of in a classical paper-and-pen way. However, realizing that possibility in a reliable way in practice may be challenging, especially for parties who do not have the requisite technology in place up-front.

## HOW TO SIGN ELECTRONICALLY

The simplest way to sign a document electronically is to attach to it a so-called "simple electronic signature." No special computer program is necessary for this kind of signature. A simple statement of the signatory's name at the end of an email or a JPG image of his or her hand-written signature attached to a PDF document will suffice to qualify as a simple electronic signature.

However, this kind of signature does not bring the desired level of trust and a document signed this way may be easily changed in the future without the parties knowing about it. Moreover, this sort of signature does not suffice to maintain the written form. Thus, the usage of this type of signature cannot be recommended where the written form is required, either by the law or by the parties' agreement.

Another type of electronic signature under the eIDAS Regulation is so-called "advanced electronic signature". This type of electronic signature provides for a higher level of security and evidential value than a simple electronic signature. This is one of the reasons why an advanced electronic signature is a preferred way to sign commercial agreements, such as framework agreements, service agreements and purchase agreements, which are not required to be in writing. Another reason is that the process of obtaining a necessary certificate and providing for the requisite technology is significantly less complex than in the case of qualified electronic signatures. However, Slovak law does not clarify whether a document signed by an advanced electronic signature satisfies the requirement of written form. This has not yet been tested in the Slovak courts either. Therefore, it remains open to judicial interpretation as to whether the requirement of written form is satisfied if an advanced electronic signature is used.

In order to be able to sign with an "advanced electronic signature", the signatory first needs to obtain a certificate. Generally, a one-off third party verification of the identity of the signing person is required prior to issuance of such certificate. The certificate may be either "commercial" or "qualified". While the commercial certificate may be issued by a wide variety of entities, the qualified certificate brings a higher level of legal certainty and, unlike the commercial one, is recognized by public authorities. As a result, it may be issued by one of the service providers listed at [this link](#). However, this makes it more complicated for parties caught by the lock-down that wish to sign electronic documents by advanced electronic signatures since their personal presence may be required for verification of their identity.

To satisfy the statutory or contractual requirement for the written form under Slovak law, a "qualified electronic signature" should be used. This is because the Slovak Civil Code stipulates that written form is always regarded as maintained if the action is captured in an electronic document that is signed by a qualified electronic signature. In addition, this type of electronic signature provides for the highest level of security and evidential value, and pursuant to the eIDAS Regulation has the equivalent legal effect of a handwritten signature in all EU Member States. In order to create this signature, the signatory must own a chip card, USB token or a similar qualified signature creation device. A qualified certificate, on which a qualified electronic signature is based, must be issued by one of the service providers as stated above.

Interestingly, Slovak law allows for the possibility to execute documents even if a verified signature of a document is required (e.g. on agreements on transfer of ownership interest in a limited liability company). To satisfy the requirement for a verified signature, the signatory must sign an electronic document by a qualified electronic signature and attach a time stamp to it.

## POINTS TO CONSIDER

There are certain cases in which electronic signatures cannot or should not be used even if parties have the requisite technology in place.

The first thing to consider is what type of document is to be signed. If there is a requirement for a document to be apostilled, such document cannot be signed electronically. Similarly, electronic execution of a document is not feasible if the document must be made in the form of a notarial deed or signed in the presence of a notary public. If a transaction involves this type of document, the signing simply cannot be achieved remotely to a full extent.

Another point to consider is the question of governing law of the document to be executed electronically. After all, even after the adoption of the eIDAS Regulation, it is still the national laws which determine the legal effect of electronic signatures. In cross-border transactions involving parties from various jurisdictions or with documents governed by laws other than Slovak law, an assessment of whether an electronic signature may be used by the parties must be carried out. Similarly, if there is a possibility of litigation, enforcement or any other action in relation to the document which would be conducted outside of the Slovak Republic, the form of the original executed document may be important and must be taken into account prior to the execution of the document as well.

## **E-SIGNING PLATFORMS**

An alternative to obtaining the qualified or advanced electronic signature is to create an account within an e-signing platform which generates signatures (such as DocuSign, Eversign or SignNow). Even though there are a variety of issues the parties need to take into consideration before using them (data protection, security, functionality, compatibility, etc.), usage of such platforms will indeed simplify and speed up execution arrangements and keep a record of who signed when. Unfortunately, at the moment, these platforms do not seem to be interoperable and thus one and the same platform should be used by all parties signing the document. Nonetheless, some of the platforms should be able to offer all eIDAS Regulation-compliant electronic signatures and thus can arguably be used in the Slovak Republic even for documents requiring the written form. In any case, the parties should always check whether the other electronic signature on the electronic document which they are about to sign is valid and whether the appropriate type of electronic signature has been used (e.g. qualified electronic signature if the written form is required).

## **WHAT LIES AHEAD**

At the moment, not many businesses in the Slovak Republic own an account on an e-signing platform and there has to date been very limited demand for electronic execution in complex, multi-party or multi-jurisdictional deals. This may change due to the challenges connected with the spread of the coronavirus. It is quite possible that the lock-down imposed in relation to the Covid-19 pandemic might accelerate the deployment of these tools into business to business communications as well, including contract execution.

However, even though a rapid increase in electronic signing processes may be expected, a broad adoption of e-signature processes, in particular in cross-border situations, could still be hindered by the limitations outlined above.

If you are interested in this topic in other jurisdictions, please see our Czech briefing: [The Coronavirus lock-down: are electronic signatures a possible solution under Czech law](#) or global briefing: [Coronavirus: Electronic signatures: when can these be used? A global perspective](#).

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