

Short notes on:

UNDERSTANDING ELECTRONIC CONTRACTUAL AGREEMENTS

Introduction

The COVID-19 pandemic has accelerated digital transformations. Digital solutions are increasingly needed to continue some of the economic and social activities remotely. Evidently the law also has to transform to adapt to the times we are living in. Concluding electronic contractual agreements, for a layperson, might seem suspicious, it is therefore, important to know the requirements of concluding contracts online.

Overview

Electronic contracts can be described as a legal document created and signed online. It is essentially a digital version of a traditional paper contract. Electronic contracts are only valid if they meet the ordinary requirements of a valid contract.

There are five requirements for a valid contract under South African law and they are:

- Consideration;
- Offer and Acceptance;
- Legality;
- Capable Parties/ Capacity;
- Mutual Assent.

The *Electronic Communications and Transactions Act 25 of 2002* (hereafter “ECT Act”) is one the main statutes governing the topic around electronic contracts and signatures.

In terms of Section 12 of the ECT Act the lawful requirement that a document must be in writing is met if the document is:

- In the form of a data message; and
- accessible in a manner usable for subsequent reference.

The ECT Act further allows for the use of electronic signatures. As a result of same and the recent push towards a more digital world, electronic contracts are fast becoming the norm.

Conclusion

It could be daunting for a business or individual to convert from the traditional way of concluding contracts to electronic contracts. There will always be questions in relation to validity and risk. In saying that, whether it be digital or not, it is of the utmost importance to seek the necessary legal advice when entering into agreements.

Contact and Attorney at SchoemanLaw Inc for your contractual needs.

