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UNDERSTANDING ELECTRONIC SIGNATURES

05 November 2018

Podcasts

What are E-signatures, how do they work and what does best practice look like? David Lowe shares his insight into this important topic and provides practical guidance on using E-signatures to manage your day-to-day commercial contracts.



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Hi, I am David Lowe and I am one of the partners behind Thinkhouse. I am also a partner in our commercial contracts team and I am going to talk today about electronic signatures.

Electronic signatures have actually been around a long time, in fact a PDF signature is actually an electronic signature and we have all completed contracts using PDF, or back in the mists of time faxed signatures.

So why is it on the agenda now? Well a number of reasons, first of all we had a new European Regulation in 2016 which sought to harmonise the rules in electronic signatures across Europe, and that led to various software houses promoting their products to support e-signatures within organisations; we have also had a practice note from the Law Society on how we, as lawyers, should deal with electronic signatures; and most recently in August 2018 we had a Law Commission consultation about electronic signatures. Around all of that is a sense of unease as we are starting to see electronic signatures becoming more and more embedded within organisations, being used for bigger and bigger transactions, and I think many lawyers are starting to wonder just how does this work? Is it legal?

With electronic signatures there are two key issues. One is the legal requirements and the second is the broader issues of signatures such as, if the contract is authentic. I am going to deal first with legal requirements.

The legal requirements turn around the formality requirements of any document under English Law. The default position is that a contract does not need to be in writing and it does not need to be signed, you can create a contract under English Law verbally. However it is not a very good idea to do that because it is then difficult to demonstrate what the contract says, you need to have a recording of it to demonstrate absolutely what was in that contract and that is why we like contracts to be in writing. But there is no legal requirement for a contract to be in writing, at least that is the case under English Law and a big word of warning here is that other laws around the world may have different requirements. There have been cases which have said that an English Law contract with a Swiss company, where that Swiss company has not

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