

ISSA

International Securities Services Association

The New Norm

Electronic Signatures

Welcome

Welcome to the second of a series of short articles, prepared by ISSA's New Norm Working Group, that deal with the impact of the global pandemic on the Securities Services industry.

Most in the industry already know the challenges that the Securities Services business faces. The pandemic, though, has brought these starkly into the spotlight. This is therefore a defining moment for the industry. If the key players come together - and act now - there is an opportunity to drive forward and effect real change. If they don't, the same discussions will be taking place in another five years.

1. Introduction

At the beginning of the pandemic, a seismic shift occurred in Securities Services. Almost overnight the industry moved from wet ink signatures and circulating originals by courier - which most jurisdictions considered the only way of signing legal agreements - to signing documents electronically and returning them via email (known as an electronic or e-signature). As a result, digital adoption and acceptance accelerated significantly.

Although electronic execution was already becoming more common in a number of jurisdictions, in most markets (and especially in Asia) it was not and, even where it was accepted, there was still the requirement to

retain the original copies with a wet ink signature. There is therefore a concern that - post-pandemic - there will still be a need for this wet ink signature or that the entire wet ink process will be completely reinstated.

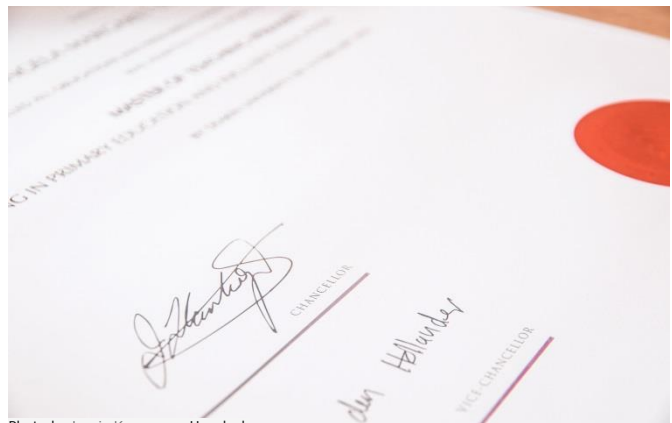


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Electronic Signatures

In this article, entitled «Electronic Signatures», the Working Group will look at:

- The adoption and specific challenges around electronic signatures in Securities Services during Covid and suggestions for a way forward post-pandemic
- The legal aspects surrounding electronic signatures, which may differ by jurisdiction (albeit that common cross-jurisdictional elements can be identified)
- The different technological solutions that are available for executing documents electronically

2. The Key Challenges

In this section, we identify the key considerations and challenges experienced by the Securities Services industry in the area of adoption of electronic signatures.

2.1 Lack of an International Standard

The key challenge around electronic signatures is that there is, as yet, no international standard for digital execution. Although many jurisdictions (like the EU, Hong Kong and Singapore) have introduced - or are beginning to introduce - legislation dealing specifically with electronic signatures and electronic execution, there are still many countries who have yet to consider introducing legislation.

2.2 The E-Signature Process

A further challenge is a specific pain point experienced around the electronic signature process. During Covid, many documents have had to be signed by copying and pasting an image of a signature into the documents as not all organizations have an online solution or special digital signature software in place.

This method is obviously less secure, inefficient and at times impractical. Some of those documents could either not be amended, electronic signatures inserted on documents could not be saved or multiple e-signatures could not be inserted in the same document at the same time. Also, some organizations did not have a formal internal electronic signing policy, which outlined the guidelines for using electronic signatures.

2.3 New Technology

Yet another challenge is that of technology. Electronic signature technology is evolving all the time. Different solutions use different types of e-signatures, offer different levels of security, trustworthiness and reliability. Digital e-signature solutions currently available only verify the identity of the signatory but not the signatory rights, which still needs to be done separately.

For e-signatures to be adopted longer term, viable technology solutions need to be available and that technology needs to be acceptable to multiple players. Currently, even in jurisdictions where legislation exists, some financial organizations still have a wait-and-see approach, because the technology and practice are considered new and untested.



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3. The «New Norm»

Whilst there are some important aspects that need to be taken into consideration when looking at electronic signatures - such as the legal aspects and the adoption of automated solutions - it is clear that there are also many benefits. One of the key benefits of electronic signatures is that they are convenient to use and efficient, as they allow for remote authentication and faster turn-around. They can also help to lower or eliminate costs, albeit that software licenses for digital signature software will come at a cost. In general, digital signature software is also easy to use and contains traceable information.

However, despite the clear benefits of using electronic signatures, some companies have indicated they are only accepting them as an interim solution during the Covid crisis. Post-pandemic, these organizations will require wet ink signatures to be provided, even for documents that were signed electronically - and considered acceptable - during Covid.

The New Norm Working Group believes that this approach would be a missed opportunity to embrace lasting change and it will complicate processes for those clients and organisations who are committed to a «digital future». We feel that banks and financial services companies should consider electronic signatures an important component for enabling an end-to-end digital process with legally binding consent.

3.1 The Legal Considerations

As mentioned above many jurisdictions have introduced or are beginning to introduce legislation dealing specifically with electronic signatures.

In Singapore's Electronic Transactions Act of 2010, electronic records and signatures are treated as any other type of electronic data and are as admissible in court as if they were paper-based records.

EU regulation (eIDAS) distinguishes three types of electronic signatures: **simple**, **advanced** and **qualified** electronic signatures:

- A simple electronic signature would be something like an image of a signature overlaid on a MS Word or PDF document, or a scanned image of a physical document signed with a wet-ink signature.
- An advanced electronic signature must meet certain requirements identifying and linking the agreement to the signer and preventing subsequent alteration of the document.
- A qualified electronic signature, on the other hand, has special status as the legal equivalent of a handwritten signature. It is generated by technology that cryptographically secures data, which enables the verification of the identity of a signer through encrypting and decrypting via digital certificates.

As long as parties are obliged by circumstances (for example, Covid) to conclude agreements electronically, they should consider whether the form of signature (in wet ink or electronic) they gather will provide sufficient evidential weight as

there may be a distinction between the legal validity of an electronic signature and its evidential weight in case of a dispute. This will depend on the type of e-signature used, but it is not a problem that is unique to digital signatures i.e., such a dispute could also arise around the authenticity of a handwritten signature. Whether an electronic signature is secure or reliable does not affect its legal validity, but it is still an important consideration for the parties involved.

The impact of cross-border transactions should also be considered. This can add further complications as rules and formal requirements may differ between jurisdictions.

3.2 Adopting Automated Solutions

To transform paper-based processes into a self-service collaborative workflow, any electronic signature solution should include secure upfront authentication, an interactive interface for signing parties, workflow management, routing conditionally based on business logic, audit trails, archive data/documents in repositories and front-to-back reporting. In addition, Securities Services providers should provide directions, in writing, to all clients and counterparties regarding their criteria for accepting any form of e-signature and for which document types they will be accepted.

An e-signature solution that meets appropriate standards of security, reliability, legal certainty and data privacy - and that can connect with other systems and processes in the organization - will ensure a streamlined digital experience for clients and staff alike and ensure far greater control and audit over operational processes.

4. In Summary

There are a number of challenges that the industry will have to work through to agree best practices. However, the New Norm Working Group truly believes it is in the Securities Services industry's best interests to develop a shared approach to adoption of electronic signatures.

Through a collective and collaborative effort in the industry, and with the assistance of legislators to reform, we can educate and share best practices around electronic signatures. We would encourage Securities Services providers to work with their clients and partners to lobby local regulators and explain the advantages and technological changes that would allow electronic signatures to take over from wet ink. We hope, and expect, that organisations will act decisively and fast in moving to use electronic signatures as a standard process that will become widely adopted and accepted. For electronic signatures to be fully accepted it is likely that an automated solution will need to be found for verifying the signatory rights potentially using blockchain technology.

The New Norm WG will continue to explore the evolution of electronic signatures through the creation of guidance on best practice in this area.