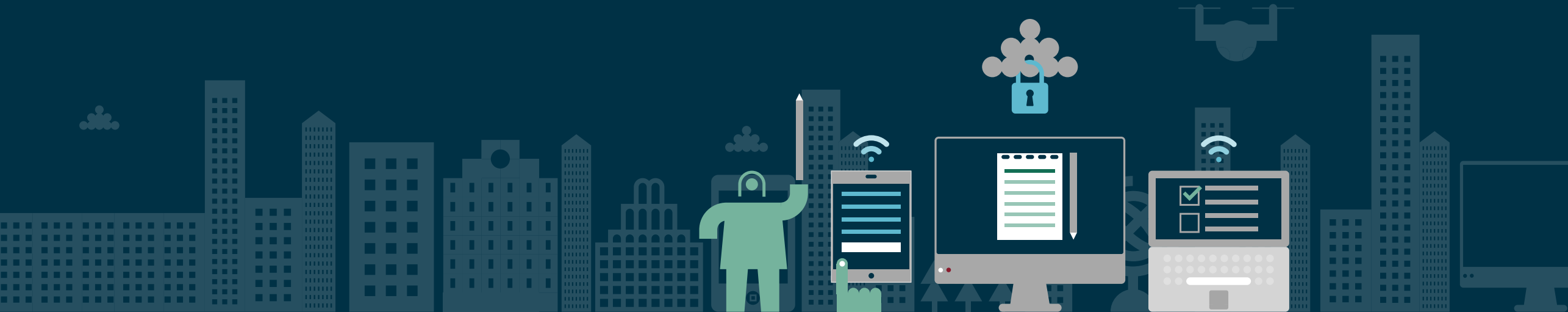


Digital HR



HR is no exception when it comes to the digital transformation of how we work and store data. All companies rely on some form of technology for managing their HR documents; forward-looking firms know that paperless HR is inevitable in our digital age. This overview is for companies anywhere in the process of digitally maintaining or transforming their HR functions. In this document, we look at a few of the legal possibilities for digitising HR files under Belgian law, paying particular attention to the signature and archiving of HR-related documents.



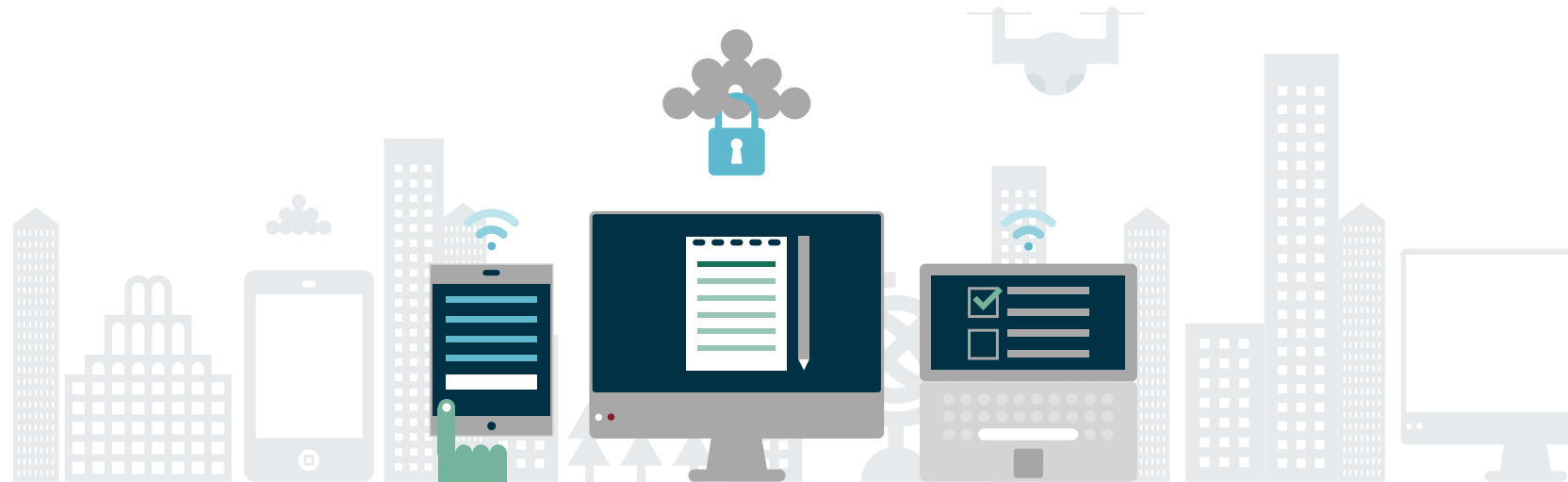
1. Under what conditions is an electronic signature legally equivalent to a wet ink signature?

According to the current legislation, only qualified electronic signatures are automatically equivalent to a wet ink signature. A qualified electronic signature is an advanced electronic signature that is created by qualified means (e.g. card reader or USB token) and that is based on a qualified certificate. At present Belgium recognises the following trust service providers as providers of qualified certificates for electronic signatures with a qualified means Certipost, QuoVadis Trustlink, Zetes, Globalsign. Nevertheless, through partnerships, other signing platforms such as DocuSign, Portima and Unversign can also generate qualified e-signatures. Under Belgian law, an advanced electronic signature created by means of the eID, in combination with the card reader or itsme and pincode, is also considered a qualified electronic signature. Moreover, following EU law, a qualified electronic signature created by a trust service provider recognised in another EU member state for the provision of qualified electronic signatures, shall also be considered a valid qualified electronic signature in Belgium.



2. Is it possible to validly sign documents by means of an electronic signature other than a qualified electronic signature?

Yes, you can choose between an normal e-signature such as a scanned wet ink signature or an advanced e-signature which is typically based on asymmetric cryptography (together "non-qualified electronic signatures"). The latter must meet specific requirements providing a higher level of signer ID verification, security and protection of the integrity of the document. Various signing platforms such as DocuSign and Adobe Sign can be used for both types of e-signature, but non-qualified electronic signatures, such as biometric signatures or scanned wet-ink signatures, are not automatically equivalent to wet ink signatures. A non-qualified electronic signature could be equivalent to a wet ink signature if it allows the signatories to be identified and to confirm their consent with the content of the document, and if it guarantees the integrity of the document.



Not all employment contracts are required to be in writing in order to be valid. For example, a permanent employment contract does not need to be agreed in writing. However, if a written document is required, it is recommended to sign with a qualified electronic signature, as it is equivalent to a wet ink signature.

3. Which documents require a qualified electronic signature?



No, neither the employer nor the employee can be obliged to electronically sign documents, including employment contracts, hence both parties would need to agree to electronically sign a document.

4. Can an employer oblige an employee to sign a document electronically?



Existing law requires the qualified archiving of electronically signed employment contracts and electronically transmitted HR documents. However, this law has not yet entered into force, since qualified archiving services do not yet exist in Belgium. In the future, electronically signed employment contracts and electronically transmitted HR documents will therefore have to be archived in a qualified manner.

5. Qualified archiving



Yes, but scans of originally signed documents will in principle not have the same evidential force as the documents with the original signature. Of course, this question with regard to the evidential force only applies if the employer does not physically archive the original version and in the event that an employee challenges the content of the scanned document. Therefore, in our opinion, it is a calculated risk to only archive scanned documents. Moreover, the employer may increase the evidential force of the scanned documents by taking measures to ensure that it can be demonstrated that it is a true copy of the original document and that it has been archived in conditions that ensure the integrity of the original content.

6. Can an employer scan existing paper signed documents?



A number of HR documents can be sent and stored electronically, such as: the individual account, the pay slips and the employment certificate. With regard to the electronic transmission of those documents, this can only be done by mutual consent between the employer and the employee. This consent applies at least for the current calendar year. Subsequently, both the employer or the employee could unilaterally decide that one or more documents must be sent again in paper form.

7. Electronic HR documents?



Employment contracts signed electronically (with a qualified or a non-qualified signature) and HR documents sent electronically must be archived by an electronic archiving service. As regards the HR documents, the electronic archiving service must store them until the expiry of a period of five years after the end of the employment contract. The work regulations must specify the identity of the archiving service and how the employees can access the archived documents. As we have mentioned under point five above, in the future those documents should be archived by a qualified archiving service. Some (dated) legislation requires that some HR documents must be physically present in the company or even be displayed in the company (such as work regulations or variable work schedules). When only keeping these documents electronically, we recommend doing so in a legible and easily accessible form.

8. What are my legal obligations as an employer?



Yes, there is currently one qualified trust service offering an electronic registered letter, namely the company Connect Solutions (www.aangetekende.email). An electronic registered letter sent via a qualified trust service has the same legal value as a traditional registered letter. Such electronic letter may be useful for the employer in the event that the competent person to sign a document and represent the company is located abroad. Please note that in order to use said electronic registered letter both the employer and the employee must be registered with the platform "www.aangetekende.email". This registration could for instance be imposed via the employment contract.

9. Can I send a registered letter electronically?



In the table we make recommendations regarding whether to sign various HR-documents with a qualified or a non-qualified signature. This list is not exhaustive. Our recommendations take into account the opportunity and the legal consequences of the two types of electronic signatures.

Type of document	Qualified e-Signature	Non-qualified e-Signature
Fixed term employment contract	✓	
Part-time employment contract	✓	
Permanent employment contract		✓
Non-compete clause	✓	
Letter to terminate with a notice period	✓	
Letter to terminate with immediate effect		✓
- Letter to terminate for serious cause		✓
- Letter informing the employee on the serious grounds	✓	
Holiday request		✓
Acknowledgement of receipt of company policies or the work regulations		✓
Evaluation forms		✓
A letter of formal notice		✓

Digital HR is not just an inevitable part of the future of doing business, it is also a strategic tool in the present for attracting candidates. More and more qualified tools and platforms are emerging for employers to streamline their operations and make information more accessible to employer and employee alike. We are here to advise on all your legal questions about digital HR and how to make it work best for your business.

Key contacts



Thierry Viérin
Managing Partner
T +32 2 515 9304
thierry.vierin@osborneclarke.com



Julien Verbeke
Junior Associate
T + 32 2 515 93 78
julien.verbeke@osborneclarke.com

Our locations around the world

Europe

Belgium: Brussels
France: Paris
Germany: Berlin, Cologne, Hamburg, Munich
Italy: Brescia, Busto Arsizio, Milan, Rome
The Netherlands: Amsterdam
Spain: Barcelona, Madrid, Zaragoza
Sweden: Stockholm
UK: Bristol, London, Reading

USA

New York, San Francisco, Silicon Valley

Asia

China: Shanghai
India*: Bangalore, Mumbai, New Delhi
Singapore

Osborne Clarke is the business name for an international legal practice and its associated businesses. Full details here: osborneclarke.com/verein/

* Relationship firm

osborneclarke.com