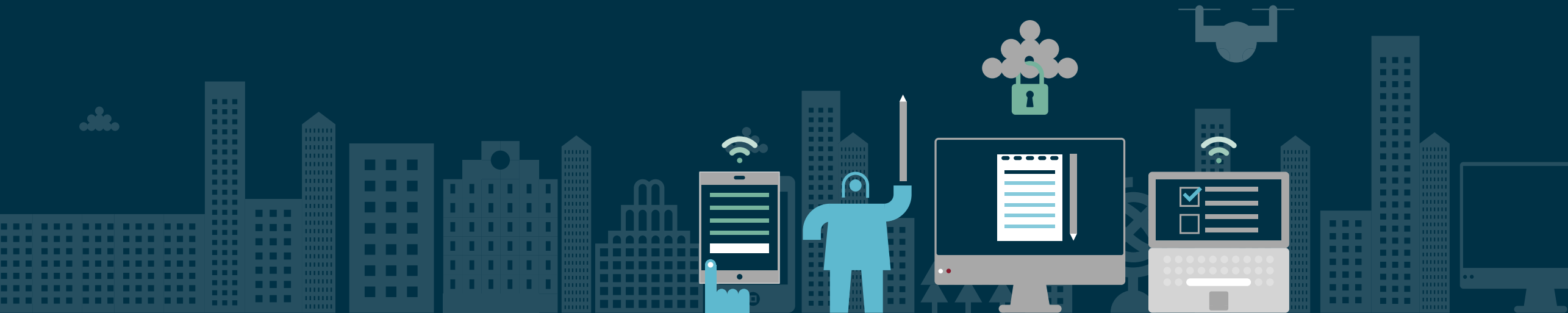


Digitalisation of legal processes



The Corporate legal workflow is no exception when it comes to the digital transformation of how to manage documents and store data. All companies rely on some form of technology for managing their corporate documents; forward-looking firms know that paperless transactional support and corporate housekeeping is inevitable in our digital age. This overview is for companies anywhere in the process of digitally maintaining or transforming their corporate housekeeping, restructurings and transactions. In this document, we look at a few of the legal possibilities for digitalising the corporate legal workflow under Belgian law, paying particular attention to the e-signature of corporate-related documents.



1. What is an e-signature?

1. What is an e-signature?

An e-signature can be defined as data in electronic format that are connected to other data in electronic format and are used by the signatory to sign. There are 3 types of e-signatures:

- Standard e-signature (SES): no specific formalities or verification applies, e.g. a name or electronic address tag under an electronic message such as an SMS or e-mail; a scanned signature, a pin code, clicking on an “I agree” button, signing with a little pen or finger on a tablet
- Advanced electronic signatures (AES): must meet specific requirements providing a higher level of the signer ID verification, security and protection of the integrity of the document, e.g. e-signatures based on public key infrastructure
- Qualified e-signatures (QES): an AES that is created by a qualified mean (card reader, token, or remote or cloud software) and that is based on a qualified certificate, e.g. the Belgian eID card in combination with a card reader and pin code



2. Under which conditions e-signatures are valid under Belgian law?

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E-signatures are valid under Belgian law. However, only QES are automatically equivalent to wet-ink signatures. The use of SES and AES can, nevertheless, not be refused merely because it is an electronic signature. The SES and AES could be equivalent to wet-ink signatures if it allows the signatories to be identified and to confirm their consent with the content of the document.



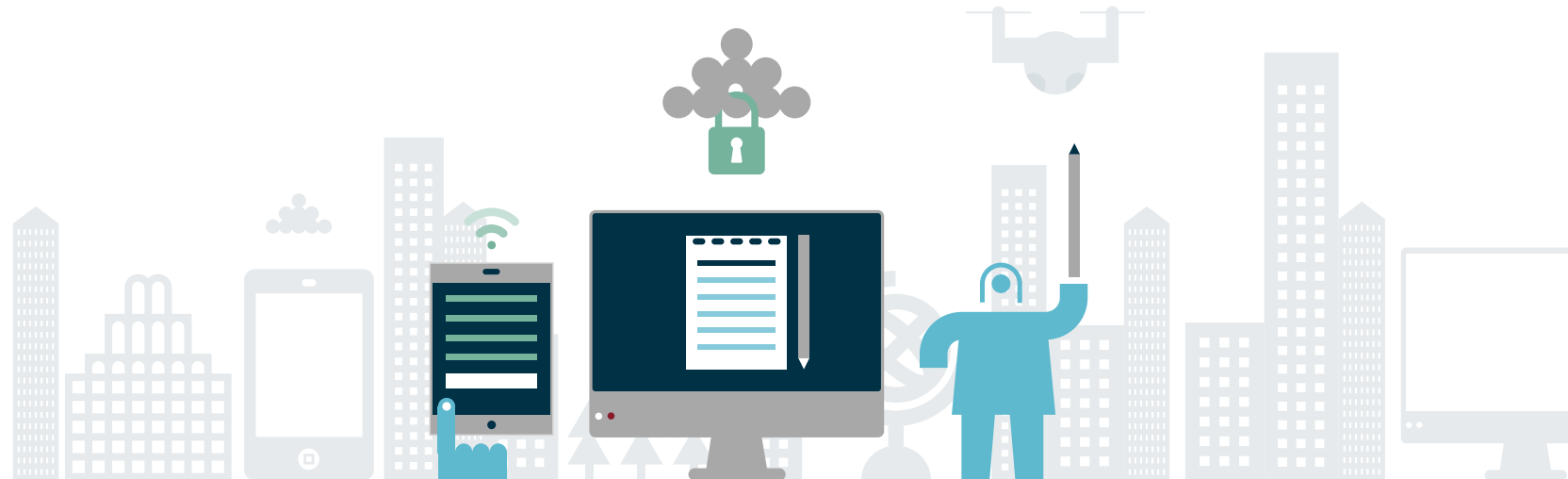
3. How to decide which type of e-signature to use?

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For most corporate documents a SES will often be sufficient. However, this will also depend on who is signing (e.g. a person who is director since 10 years vs. a newly appointed director) and which SES he/she is using (e.g. a SES applied on the relevant document via an online signing platform such as DocuSign vs. an email with a standard signature block of an unknown email address). Based on this analysis, the use of an AES or even QES might be considered more appropriate as it provides more legal certainty.

In (potential) conflict situations, high value transactions or sensitive matters, where there is a risk that the content or the consent of the signatory could be challenged, it is recommended to use a AES or QES or use the wet-ink signature.

For each document, a risk analysis should be made, taking into account the use of the documents (internal vs external), the technical feasibility to implement an e-signature and the related costs.



4. Can I use e-signatures for cross-border transactions?

E-signatures are valid under Belgian law, so they can be used to sign corporate documents of Belgian companies (see also Q5 for which corporate documents). Whether or not a foreign entity, trade register of governmental agency will accept documents that are signed electronically by a Belgian company depends on the laws of the relevant jurisdiction. It is recommended to raise the question of electronic signatures with the local legal counsel especially if filings with local trade registers are required.

A QES created by a trust service provider recognised in another EU member state as provider of qualified e-certificates, shall be considered a valid QES in Belgium.

4. Can I use e-signatures for cross-border transactions?



5. Can I issue corporate documents electronically and have them signed with an e-signature?

Unless decided otherwise by the law or a company's articles of association, corporate documents can be held electronically and signed with an e-signature. The Belgian legislator may, however, impose to use a QES for certain specific documents (e.g. electronic employment contracts).

As soon as the corporate documents need to be notarised and/or filed with the clerk's office of the competent Enterprise Court in Belgium and published in the Belgian State Gazette, an original wet-ink signature will often still be required.

In the table below you will find an (non-exhaustive) overview of the most common corporate documents and how they can be signed. This will, however, always be subject to the risk analysis described in Question 3.

5. Can I issue corporate documents electronically and have them signed with an e-signature?

Type of document	e-Signature	Wet-ink signature
Board minutes/written board resolutions	✓	
Board reports (if not addressed to the extraordinary shareholders' meeting)	✓	
Minutes of the shareholders' meeting/written shareholder resolutions	✓	
Minutes of the shareholders' meeting or board meeting held in presence of the notary, including the attendance list and any board report attached to the notarial deed		✓
Waiver letter	✓	
Proxy in the form of a private deed (whether or not to be attached to a notarial deed)	✓	
Proxy in the form of an authentic deed	✓ (QES)	✓
Merger or (partial) demerger proposal to be filed with the Enterprise Court*		✓
Proposal for contribution or transfer of a branch of business or universality to be filed with the Enterprise Court*		✓
Documents for opening a branch to be filed with the Enterprise Court*		✓
Share purchase agreements, investment agreements, shareholders' agreements, partnership agreements	✓	
Annual accounts to be filed with the National Bank of Belgium		✓

* According to the current position of the local Enterprise Courts

6. Can board and shareholders' documentation for approving the annual accounts ("AGM documents") be e-signed in other European countries?

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Belgium: AGM documents can be e-signed; the annual accounts to be filed with the National Bank require a wet-ink signature.



France: AGM documents, including the annual accounts, can be e-signed.



Germany: AGM documents, including the annual accounts, of a non-listed company can be e-signed, but only with a QES. However, several restrictions and exceptions might apply.



Italy: AGM documents require a wet-ink signature. The filing of annual accounts with the registry of companies, however, will require an e-signature.



Spain: AGM documents can be e-signed. Certificate of resolutions to be notarised and filed at the commercial registry requires a wet-ink signature. Annual accounts can be e-signed provided they are signed the same day as the board resolutions drawing-up said accounts and provided that the auditor accepts the e-signature.



Sweden: AGM documents can be e-signed. AES or wet-ink signature is required for the annual accounts. Wet-ink signature is required for the certificate of approval.



The Netherlands: AGM documents, including the annual accounts, can be e-signed.



UK: AGM documents, including annual accounts, can be e-signed.

Note: this is only a summary overview, please consult your local OC contact person for further guidance.

7. Which signing tool to use?

Besides a simple scan of a written signature, the company can use various online software tools for generating SES, AES and QES. Amongst the most popular e-signature platforms are DocuSign, AdobeSign and SignNow. Besides offering e-signature creation services, most of these tools also support the management of electronic documents in general. It is recommended to use an online e-signature tool that is eIDAS compliant.

7. Which signing tool to use?



8. What with electronically kept securities registers and articles of association?

Companies have the choice between a physical securities register or a digital securities register. The latter is, however, subject to certain technical formalities (in particular regarding protection of personal data and the authorised access to the such register). Consequently, a simple Word or Excel document will not be sufficient. Belgian notaries and accountants offer an online platform where they can keep and manage the digital securities register on behalf of the company (www.estox.be/nl/). The platform also ensures that the UBO registration of each legal entity is updated automatically.

A (free) publicly available databank managed by Belgian notaries now keeps an electronic copy of coordinated articles of association of each Belgian legal entity (https://statuten.notaris.be/costa_v1/enterprises/search).

8. What with electronically kept securities registers and articles of association?



9. How to start?

- Identify which documents (internal and external) can be signed electronically;
- Determine the appropriate e-signature and level of security for each type of document;
- Choose an appropriate e-signing platform/tool; At Osborne Clarke we can offer signing processes via different online platforms including DocuSign;
- Issue a company e-signing policy to harmonise signing processes within the company and/or group;
- Implement relevant electronic archiving and data security tools;
- Discuss e-signing options with other parties and their legal advisors at an early stage of domestic and cross-border transactions.

9. How to start?



10. Conclusion and key contacts

As part of a larger digital transformation, the digital corporate housekeeping and contract management can simplify the life of your business by reducing the administrative burden and risk of losing paper files, harmonising signing processes and facilitating remote signing. The integration of the e-signature should be combined with clear guidelines and the necessary data security and risks assessments. We are here to advise on all your legal questions about digital corporate housekeeping and how to make it work best for your business.

Key contacts



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