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As a result of the ongoing COVID-19 outbreak, it is common for many organizations to work remotely and refrain from in-person meetings. Consequently, many organizations may be wondering: “How do we continue to prepare, execute, and file all of the documents necessary to the continued operation of our organization?”. This issue becomes increasingly difficult when organizational members do not have access to certain technological means, such as a printer, scanner, or fax machine. One solution to this issue may be the use of electronic signatures. In order to determine whether your organization can utilize electronic signatures, we have prepared this resource.

What is an electronic signature, and when can it generally be used?

For general information concerning the personal use of electronic signatures and their validity, please consult another McKercher LLP resource – [Using Electronic Signatures for Contracts and Other Business Documents during the COVID-10 Pandemic.](#)

Can electronic signatures be utilized by my organization?

For-Profit Corporations & Not-For-Profit Corporations

What is deemed an “electronic signature”

Under both Saskatchewan for-profit and non-profit legislation, an electronic signature refers to (i) one or more letters, characters, numbers or other symbols, (ii) in electronic form, (iii) that the person has created or adopted in order to sign a document, and (iv) that is incorporated in, attached to or associated with an electronic document.

Can documents be signed and sent electronically?

The short answer to this question is generally “yes.” Pursuant to Saskatchewan’s for-profit and non-profit legislation, corporations may use electronic signatures for any document required to be executed and provided in writing.

If so, are there any limitations to this authority?

There are limitations to this authority, as all statutory declarations or affidavits executed pursuant to for-profit and non-profit legislation must be signed manually. This legislation also provides the following restrictions for those intending to use electronic signatures:

- The corporation’s bylaws and articles must not prohibit the creation of electronic documents or use of electronic signatures, or alternatively, must not mandate that the information be provided in a form other than electronically;
- Any party receiving the electronically signed document must consent in writing to the use of an electronic signature;



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- The electronically signed document must be provided in a form in which the recipients can access and save the document for future reference (i.e. it must be downloadable and capable of being saved);
- If the electronically signed document is sent to multiple people, it must be provided concurrently to all parties (i.e. it must be sent at the same time);
- The electronically signed document must be provided to the recipient's requested address/email address, or alternatively, it must be saved to a mutually accessible source (i.e. a website). If the document is saved to a mutually accessible website, the signor must notify the recipients that it has been posted to the website; and
- The individual signing the document with an electronic signature must:
 - Use a signature which is unique to the person (i.e. not just an "x"); and
 - Use a signature that can be used to identify the signor (similar to above, the signature must identify the signor. Presumably, this will be satisfied by the signature stating the signor's name).

When are electronic documents sent and received?

A party is deemed to have sent an electronic document when it leaves the information system which is in the control of the creator of the document (i.e. when the creator of the document [or another person on their behalf] sends it from their email server).

A party is deemed to have received an electronic document when it enters the designated information system provided by the recipient (i.e. when the document enters the recipient's designated email inbox). Alternatively, a party is deemed to have received an electronic document when it is made available through the generally available electronic course (i.e. when it is posted to the website), and notice of the document's availability is provided to the recipient in writing.

Partnerships

What is deemed a "signature"

In Saskatchewan, our partnerships legislation defines a signature as including a signature that (i) consists of one or more letters, characters, numbers or other symbols, (ii) is in digital form, and (iii) is incorporated in, attached to or associated with a form, notice, document or other information required to be provided or submitted in accordance with partnership legislation.

Can documents be signed electronically?

The short answer to this question is generally "yes". Pursuant to the above-mentioned legislation, the inclusion of "in digital form" in the definition of signature provides that all references to the requirement of signatures include the usage of electronic signatures. As a result, a partnership is capable of filing, among other things, the following with electronic signature: application for registration, cancellation of registration, notice of change, and annual returns.

If so, are there any limitations to this authority?

Saskatchewan partnership legislation places a broad and general limitation on the use of electronic signatures. This is because any signature provided to the registrar's office will only be satisfied if it meets the requirements of the registrar with respect to the creation and reliability of the signature. Furthermore, the registrar's office is free to request additional information or documentation where they feel it is necessary to support any document received by their office. Unfortunately, the legislation does not provide further detail as to when a signature will be considered reliable by the registrar, or what additional information may be required.

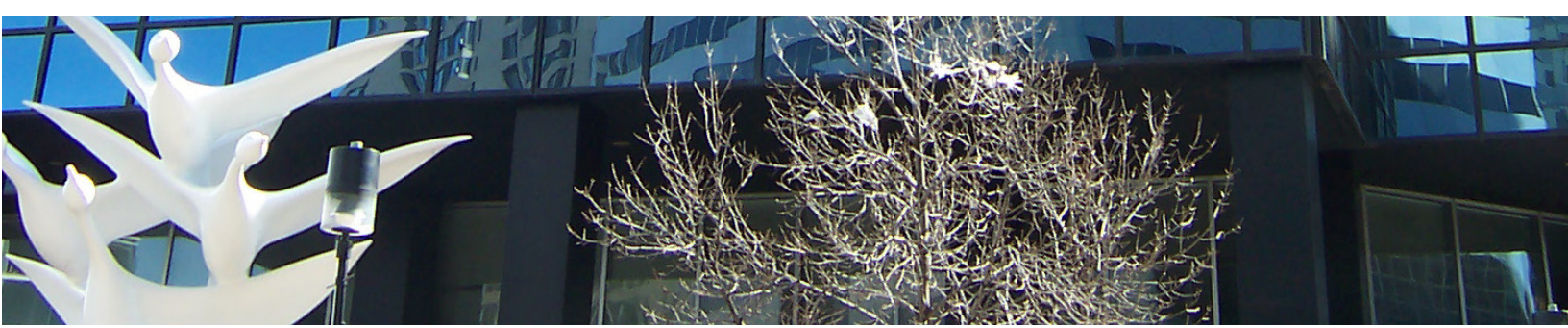
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However, best practice would be that any person attempting to use electronic signatures ensure their signature is unique and can be used to identify the signor. Furthermore, best practice would also dictate that the organization ensures its directors or officers have consented to the use of electronic signatures for the execution of such documents.

Co-operatives

What is deemed a “signature”

In Saskatchewan, co-operatives legislation defines as signature as including a signature that (i) consists of one or more letters, characters, numbers or other symbols, (ii) is in digital form, and (iii) is incorporated in, attached to or associated with a form, notice, document or other information required to be provided or submitted in accordance with these regulations.

Can documents be signed electronically?

The short answer to this question is generally “yes”. Pursuant to the above-mentioned legislation, the inclusion of “in digital form” in the definition of signature provides that all references to the requirement of signatures include the usage of electronic signatures.

The co-operatives legislation outlines that the following documents require signatures, which may, therefore, be satisfied electronically (this list is not exhaustive):

- Articles incorporation;
- Articles of amendment;
- Articles of amalgamation;
- Articles of continuance;
- Articles of reorganization;
- Articles of revival;
- Notice of change of registered office;
- Notice of directors and officers consent to act as directors and officers;
- Declaration to act as power of attorney;
- Submission of annual returns; and
- financial statement approval prior to being placed before the membership.

Furthermore, Saskatchewan legislation provides co-operatives with the authority to include in their bylaws a provision that share certificates can also be electronically signed and that such share certificates are deemed as valid as if they had been manually signed. As a result, the directors of a co-operative should review the terms of their bylaws to determine whether they prohibit the electronic execution of share certificates. Where such prohibition exists, the directors of the co-operative should consider amending the provisions of the bylaws to facilitate the issuance of share certificates where manual signatures may be difficult to obtain.

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If so, are there any limitations to this authority?

Saskatchewan co-operatives legislation imposes identical limitations as those identified in Saskatchewan partnership legislation. Therefore, as mentioned above, to ensure an electronic signature is considered reliable, best practice dictates that any person attempting to use electronic signatures ensures their signature is unique and can be used to identify the signor. In order to support the use of electronic signatures, the organization should also ensure its directors or officers have consented to the use of electronic signatures for the execution of such documents.

Trusts

What is deemed a “signature”

In Saskatchewan, our trust legislation is silent on what constitutes a signature and whether documents may be signed electronically. As a result, one may refer to Saskatchewan’s Electronic Information and Documents Act, which defines an electronic signature as information in electronic form that a person has created or adopted in order to sign a document and that is in, attached to, or associated with the document. The electronic documents legislation applies where it does not conflict with any other legislation authorizing, regulating, or prohibiting the use of electronic documents and signatures.

Can documents be signed electronically?

The short answer to this question is generally “yes”. Pursuant to the above-mentioned electronic documents legislation, with the exception of trusts created by wills, a requirement pursuant to any law requiring the signature of a person is satisfied by an electronic signature.

If so, are there any limitations to this authority?

For further information with respect to the electronic documents legislation and its requirements and limitations, please consult another McKercher LLP resource – [Using Electronic Signatures for Contracts and Other Business Documents during the COVID-10 Pandemic](#).

What is my next move if my organization does not facilitate these technological capabilities?

The lawyers at McKercher LLP are well-prepared to help you with working through organizational governance and technology-related issues. Our team functions in a highly collaborative fashion to ensure you are receiving all the legal advice you need for proper analysis and drafting of your organization’s governance structure. For further information on the extent and limitations of your organization’s ability to utilize electronic signatures, do not hesitate to reach out to the lawyers at McKercher LLP.

About the Authors:

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About McKercher LLP:

McKercher LLP is one of Saskatchewan’s largest, most established law firms, with offices in Saskatoon and Regina. Our deep roots and client-first philosophy have helped our firm to rank in the top 5 in Saskatchewan by Canadian Lawyer magazine (2019/20). Integrity, experience, and capacity provide innovative solutions for our clients’ diverse legal issues and complex business transactions.



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