

# LEGAL CONSIDERATIONS AND BEST PRACTICES

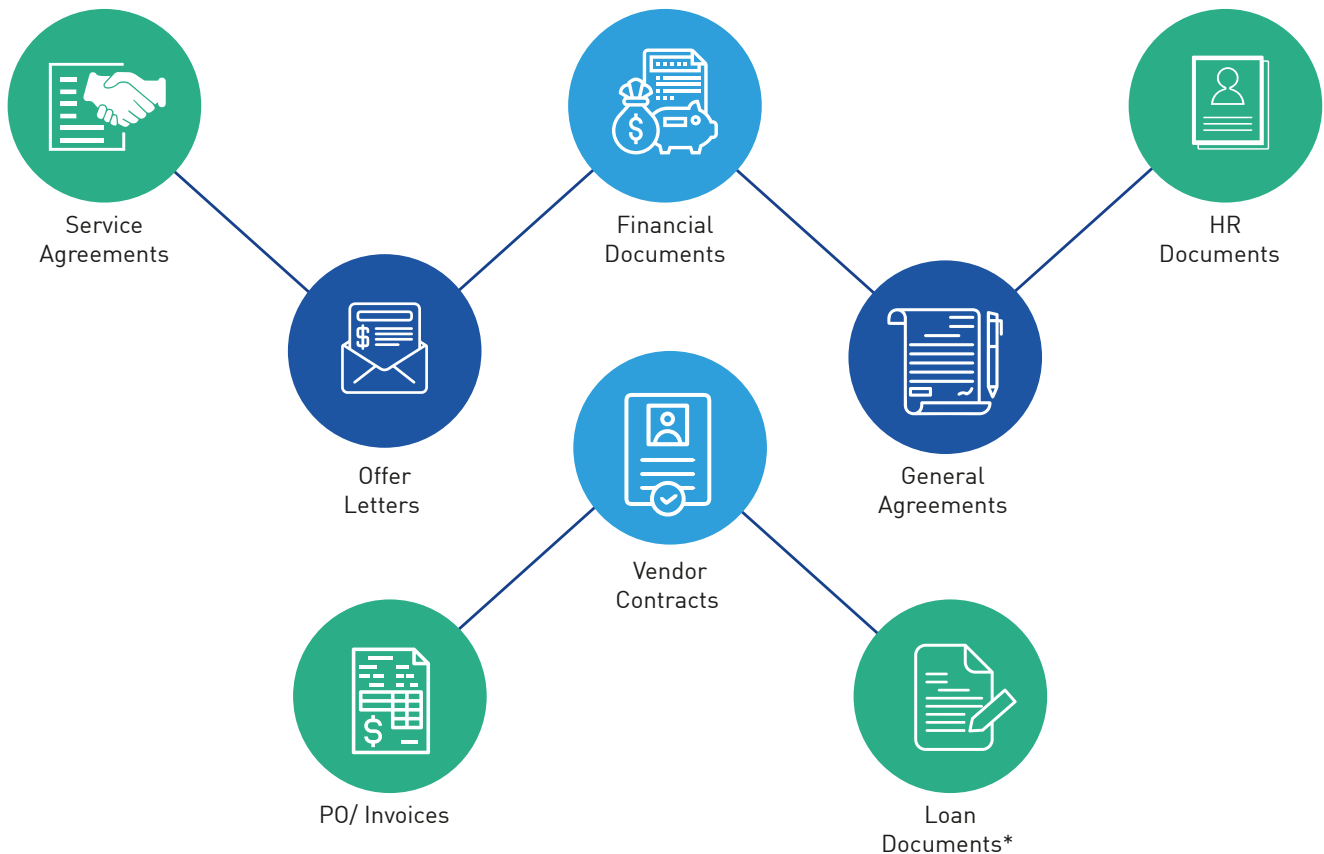
## Introduction :

Signatures are unique representatives of one's identity. Traditionally, this identity is provided through hand-written signatures and holds an important legal position in any document. With the increased use of online transactions and contracts in this digital era, the need to bind the utmost security to signatures is also raised. This need of the hour for unique and strong protection of one's identity i.e. signatures are served by the concept of electronic signatures. Electronic signatures served the purpose well as they are less prone to forgery and tampering. Moreover, they are legally valid to use too.

Not only the security was the main concern for the adoption of electronic signatures, but there were many. Let's discuss what else provokes the execution of eSignatures?

In order to enhance the convenience of doing business and streamlining the storage of records, the govt of India has promoted the utilization of digital technologies by Indian citizens and corporations. As a result of it, more and more service providers started using e-signatures. This, in part, is just because the Government aimed to enable electronic transactions using Aadhaar. It is an initiative under the Digital India campaign during which the Indian Government issued UIN (Unique Identification Number) to the residents of India.

## Now let's see what all documents can be signed electronically.



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*\*However, IT Act 2000 excludes some categories of documents. Those documents include the ones that involve the transfer of immovable property rights, Will, trust, PoA promissory notes, etc. All these cannot be electronically signed and must be executed using traditional "wet" signatures to be legally enforceable.*

Other than eSignatures there are other two alternatives of wet signatures. These are:

- Digital Signatures
- Aadhar Signatures

Now, what's the difference between these three alternatives of wet signatures?



## Electronic Signatures:

An electronic signature can be captured on a computerized document, for example, a delivery slip. There are several methods to do so such as using a tablet or mobile app to capture an image of a hand-written signature. One can also simply type the name into a signature box. One of the most common example of electronic signature is when you sign for a delivery on the courier using a digital device.

## Digital Signatures:

Digital signatures can be captured using digital signature certificate (DSC). This DSC is issued to the signer by Government - authorized Certifying Agencies (CA's). It consists of a set of unique keys named as the private key and public key. To sign a document, the signer just needs to insert the USB token that contains the DSC uniquely provided to him to the system and enter the password as well.

## Aadhaar Signatures:

Any Indian citizen having a valid Aadhaar card and a mobile number registered to it can easily sign the documents. To sign a document, the signer needs to show their documents, enter the Aadhaar number, upon which he will receive an OTP on a registered mobile number and the signature gets done.

Now let's discuss further on the Legality of eSignatures Under IT Act 2000 for more clarity:

Under the IT Act, 2000, it has been recognized by the Indian law that electronic signatures are legally valid to be used. Even it is now considered as equivalent to hand-written signatures but with some exceptions. One such exception is that for an eSignature to be considered valid, it needs to satisfy several conditions. In addition to this, it is required to keep some checks before totally relying upon the eSignature.

## Recommended Best Practices that help satisfy the requirements of the IT Act:

- Include a mechanism for verifying the identity of the party who signed the document (for example, by sending a verification request to a unique email address or sending an OTP to the signing party's mobile phone).
- Obtain the signing party's consent to do business electronically.
- Demonstrate which method is being used by the signing party to sign the document electronically.
- Track the process securely and keep an audit trail that logs each step.
- Secure the final document with a tamper-evident seal.

All these industry best practices are daily practices here at MSB!!

## The legality of eSignatures Worldwide

Not only in India, but electronic signatures are also legal, trusted, and enforceable around the globe. Laws can vary from country to country, but MSB Docs makes compliance simple for all.

In the United States, electronic signatures have the same legal status as hand-written signatures, thanks to the E-SIGN Act and the Uniform Electronic Transactions Act (UETA). Other than the USA and India, all other countries, one needs to be familiar with the local laws while rolling out e-signatures

## Basic Principles to Keep the eSignatures Valid and Legal

Now, as the eSignature laws vary from country to country, yet the basic principles to consider the eSignature valid are almost the same everywhere. MSB supports electronic signatures (that can be generated by combining the Aadhaar identity number with an electronic Know-Your-Customer (eKYC) method.) and digital signatures (that can be generated by an "asymmetric crypto-system and hash function.)

For these two types of e-signatures to be considered valid, they must satisfy the following requirements:

- E-signatures must be unique to the signatory (they must be uniquely linked to the person signing the document and no other person). This condition is met with a digital ID assigned to each user in MSB.
- Whenever a document is being signed, the signatory or authenticator must have control over the data used to generate the e-signature and no one else. This can be done by directly affixing the e-signature to the document.
- In the future, any change or alteration of data after affixing electronic signature must be detectable. This can be done by encrypting the document with a tamper-evident seal.
- Having an audit trail of steps taken during the signing process is a must.

- Document signer certificates and e-signature or digital signature certificate must be issued by a Certifying Authority recognized by the Controller of Certifying Authorities appointed under the IT Act.
- If the validity of an electronic contract is disputed, the party claiming the validity of the contract must be able to demonstrate the essentials of a valid contract.
- If a contract that is executed using email as the first authentication method or that adds a second factor of authentication, such as a password or phone PIN, may be valid under Indian law, provided that it satisfies the requirements of the IT Act.

If all these conditions are satisfied, then there is a legal presumption in favor of the validity of any document signed using an electronic signature.



**E-signatures with Aadhaar eKYC** offered a smooth shift from the use of wet signatures to e-signatures. Let's see how:

Aadhaar eKYC is a paperless process in which the identity of the subscriber is verified through the Aadhaar authentication process of the Unique Identification Authority of India, using either biometrics or a one-time passcode (OTP). MSB Docs can work with the accredited service providers to build Aadhaar eKYC experiences into the solution. For instance, Aadhaar based signing is available for use with MSB is enabled by a partnership with one of the accredited providers, C-DAC

## MSB Compliance



MSB meets and exceeds the most demanding e-signature laws and regulations across the globe. All the documents that are signed via MSB are legally enforceable under the E-SIGN Act (USA), eIDAS (EU), IT Act 2000 (India), and meet FIPS 140-2 requirements. MSB holds the highest standards for security and is certified with ISO 27001, EU-US Privacy Shield, and SSAE 16. We are compliant with FDA 21 CFR Part 11, EMA, IT Act 2000, and HIPAA laws. MSB Docs ensures the reliability of records through a transparent audit trail of the documents such that the date, time, and the sequence of events in relation to the documents may be clearly established.

## Conclusion

Almost every Country, especially the Government of India is actively encouraging its citizenry to use electronic signatures. In this regard, MSB Docs comply with the applicable provisions of the IT Act, including its usage of the eSign, which is a legally recognized electronic signature by authorities in India.



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