

## Alternative Form Of Execution Of Contracts During Pandemic

written by Aishwarya S | June 22, 2020



### Digital Contracts and Execution of Contracts Amidst COVID-19

“Novel Corona Virus” or “COVID-19” has not only resulted in a loss of lives but has also caused economic damage which is not easy to repair. The impact can be seen in the form of loss of business and employment in certain sectors of the economy since the government announced the lockdown and emphasized social distancing. The businesses and commercial transactions have reduced because of two reasons, one being the impossibility to execute contracts and other being stamping of documents. However, with the introduction of digital technologies, there is an alternative for the execution of physical contracts and we also have enactments supporting such contracts.

#### How To Execute Contracts During This Pandemic?

It is a general practice among people to execute contracts although we have advance technologies for the purpose of easier negotiations. However, the time has come to bring about a change and we have to adapt to the alternative form of execution of contracts. This also gives rise to certain questions which are as follows:

What is the alternative for physical contract execution and is there any statutory laws supporting such contracts?

The alternative for a physical contract is an e-contract and execution of e-contracts have been supported by the following enactments:

- Information Technology Act 2000: Sec 10 A of Information Technology Act 2000[1] states that a contract cannot be considered unenforceable on the grounds that it is in electronic form. However, such contracts should fulfil essential elements of a valid contract as per Sec 10 of the Indian Contract Act 1872 such as:
  - Proposal and Acceptance
  - Competent parties
  - Genuine and Free Consent
  - Lawful Consideration
  - Lawful Object
  - Possibility of performance
  - Writing and registered
  - The agreement should not be expressly declared as void
- Indian Evidence Act, 1872: Section 65B of Indian Evidence Act 1872[2] specifies that electronic records can be considered as evidence only when it

is derived as output from the computer. The act also emphasizes on acceptance of digitally signed documents as evidence as per the criteria specified in Sec 85A,85B,85C, 88A and 90A of Indian Evidence Act 1872[3].

What are the modes available for execution of an E- contract?

The following are the modes available for execution of e-contracts:

- Digital Signature: It refers to those signatures affixed electronically to the documents to verify the authenticity of the documents. It is not only recognized by the Evidence Act 1872 but also recognized in Section 3A, Sec 4 and 5 of Information Technology Act 2000[4].

But if the documents have to be signed digitally the digital signature should be issued by certifying authority.

- E-mail: As mentioned earlier, proposal and acceptance are one of the essential elements of a valid contract. However, the acceptance must be made in criteria specified under Section 7 of the Indian Contract Act 1872. Therefore, if the acceptance is conveyed by e-mail then we can say that the contract is enforceable though the parties have not signed the contracts. Moreover, Section 7 of the Indian Contract Act 1872 does not specifically say that signature is only considered as acceptance.

Whether all documents can be digitally signed?

As per Schedule –I of Information Technology Act 2000, digital signatures are not valid on the following documents:

- A negotiable instrument (other than a cheque) under Sec 13 of the Negotiable Instrument Act 1881
- Power of Attorney defined under Sec 1 A of Power of Attorney Act 1882
- Trust deeds
- Wills as per Indian Succession Act 1925
- Any documents related to sale or conveyance of immovable property.

How To Tackle The Issue Of Stamping Of Documents?

Any document which is required to be registered should be duly stamped since the government has imposed social distancing and no one would want to approach the registrar for stamping of documents. The following are the methods of stamping which can be used as an alternative to paper stamps:

- E-stamp: This is one of the popular methods of stamping documents wherein the documents are stamped electronically by entering necessary details on the website for e-stamp such as parties executing documents, who pays stamp duty, type of document etc. Based on the information, the stamp duty is automatically provided on the website. This can be done through an e-stamp vendor or co-operative bank which provide the facility of e-stamping.
- Franking: It is the process where the documents are marked and stamped by the use of a franking instrument. Here the parties prepare the document and get it stamped from banks or the centres which are established for the purpose of franking.

Conclusion

E-contracts are indeed a convenient and suitable form of execution of contracts. However, it does not ensure data protection, privacy and security of documents. So, the parties have to take appropriate measures such as encryption of documents or by providing access to the authorized persons. The Information Technology Act 2000 contains provisions relating to securing the documents.

In case of stamping, we observe that e-stamping and franking are good alternatives to physical stamps although it is not a matter of concern in

some states which provide an extended timeline up to 30 days after lifting of the lockdown.

When we analyse the provisions of above-mentioned enactments, we can anticipate the higher probabilities in future for adapting alternatives suggested for the execution of contracts and stamping of documents during the current situations over conventional form of execution of contracts and stamping of documents. Therefore, it is suggested to make stringent laws with respect to Information Technology and Admissibility of Evidence.

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- [\[1\]](#) Sec 10A – Validity of contracts formed through electronic means
- [\[2\]](#) Sec 65B of Indian Evidence Act 1872- Admissibility of electronic records
- [\[3\]](#) Sec 85A of Indian Evidence Act 1872-Presumption as to electronic agreements
- Sec 85B of Indian Evidence Act 1872-Presumption as to electronic records and digital signature
- Sec 85C of Indian Evidence Act 1872-Presumptions as to digital signatures
- Sec 88A of Indian Evidence Act 1872- Presumptions as to electronic messages
- Sec 90 of Indian Evidence Act 1872- Presumptions as to electronic records five years old
- [\[4\]](#) Sec 3A of Information Technology Act 2000– Electronic Signature
- Sec 4 of Information Technology Act 2000-Legal recognition of electronic records
- Sec 5 of Information Technology Act 2000-Legal recognition of electronic signatures

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