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Electronic Signature vs. Digital Signature

What are They and What are Their Differences?

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Since the COVID-19 outbreak, many businesses have shifted to paperless or remote operations. They have discovered and now prefer the efficiency of using electronic and/or digital signatures for execution of agreements and legal documents compared to traditional wet-ink signatures.

There is often a misconception that electronic signatures and digital signatures are the same and the terms are often used interchangeably. In Malaysia, they are not legally identical and the distinction matters, particularly where statutory requirements or higher evidentiary assurance are involved.

What are Electronic Signatures?

Electronic signatures are legally recognised in Malaysia under the **Electronic Commerce Act 2006 ("ECA")** and have been defined as "any letter, character, number, sound or any other symbol, or any combination thereof, created in an electronic form and adopted by a person as a signature" used in commercial transactions only. They are legally enforceable if they: identify the signatory and their approval therein; remains under their exclusive control during creation; and ensures that any subsequent changes to the document or signature are detectable. This may include:

- clicking an "I Agree" button indicating acceptance to the terms and condition to an online platform; or
- using an online signing platform.

How are Electronic Signatures Different from Digital Signatures?

Digital Signatures are regulated under the **Digital Signatures Act 1997 ("DSA")** and are essentially generated using asymmetric cryptosystem technology that creates a key pair (private key and public key) which provides identification and verification of the signatory and any changes made to the signature. Additionally, digital signatures must incorporate a digital certificate issued by a **Certificate Authority ("CA")** licensed by the **Malaysian Communications and Multimedia Commission (MCMC)**.

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The list of licensed CAs includes:

- MSC Trustgate.Com Sdn. Bhd. (TrustGate)
- Raffcomm Technologies Sdn. Bhd. (Rafftech)
- TM Technology Services Sdn. Bhd. (TMCA Portal)
- Vista Kencana Sdn. Bhd. (Vista Kencana)

*Please refer to https://mcmc.gov.my/en/sectors/digital-signature/list-of-licensees for the list of current CAs.

Section 62 of the DSA also provides that a document signed with a digital signature shall be as legally binding as a document signed with a handwritten signature, an affixed thumbprint or any other mark, and shall be deemed to be a legally binding signature.

Hence, on top of an electronic signature - which is often a symbol or a mark on an electronic document - digital signatures involve a complex and higher level of authentication to determine the legitimacy and identity of the signatory as well as any changes made to the signatures.

Other Differences

	Electronic Signature	Digital Signature
Governing Law	Electronic Commerce Act 2006	Digital Signature Act 1997
Certification authority required	No	Yes

The best practice in determining whether an electronic or a digital signature is more suitable should be guided by the level of commercial risk involved. For low-value operational contracts, electronic signatures will usually suffice. For high-value transactions or documents involving statutory formalities, digital signature, with stronger authentication mechanisms, are often appropriate.

Frequently Asked Questions ("FAQ")

Are documents executed via e-signature sufficient to be submitted for stamping at the Malaysian Inland Revenue Board (IRB)?

- Generally, they can be stamped by the IRB. However, in the event of any disputes, even if the electronically signed documents were stamped and admitted as evidence, the authenticity of the e-signatures may still be questioned in court.

Are DocuSign e-Signatures or Adobe e-Signatures considered electronic signatures or digital signatures?

- Although certificates generated by both DocuSign e-Signatures and/or Adobe e-Signatures are able to identify the signatory and changes made, they are not "digital signatures" under the **DSA** unless the signature is supported by a certificate issued by a CA licensed by the MCMC.

What is the relevance of Digital Signature in e-Invoice?

- The IRB requires taxpayers who are submitting e-invoices via the **Application Programming Interface ("API")** mechanism to be verified by a digital signature that is in accordance with the requirements published by IRB. The digital signature will verify the identity of the relevant taxpayer.

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Disclaimer: This update is provided for general informational purposes only and does not constitute legal advice. It should not be relied upon as a substitute for legal advice.

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