

HOW TO CONCLUDE OR SIGN AN AGREEMENT REMOTELY (not only) DURING A STATE OF EMERGENCY

Dear Clients and Business Friends,

Since 12 March 2020, when it proclaimed a state of emergency, the Czech government has been adopting crisis measures in response to the coronavirus pandemic. These crisis measures substantially change the traditional work style to which most of us are accustomed. Videoconferences are held instead of meetings, personal contact or appointments at public offices are not desirable. Therefore, questions naturally arise as to how to behave towards business partners and authorities without physically meeting with them in practice. **For some time now, Czech law has provided for the possibility to conclude contracts and perform legal acts electronically**, i.e. even in situations when the parties cannot meet. Here we present a summary of FAQs regarding how to remain “functional” at a distance.

DO YOU NEED TO NEGOTIATE WITH YOUR BUSINESS PARTNER OR TO CONCLUDE AN AGREEMENT?

There are practically no limitations to private acts in electronic form.

Even if an electronic means of legal acting allows capturing content of a particular act and sufficiently identifying the person acting, the requirements for the written form of legal acts are maintained even without affixing a signature.¹

Although every contract signed in this manner should be valid, **we recommend setting clear internal rules for electronic signing**, in particular regarding the value of performance and potential risks for the company on whose behalf a designated person signs.

To sign an electronic document in private relationships any type of electronic signature can be used including what is called an **electronic signature**², which is considered to include any data “... *in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign*”.

Although the Supreme Court still issues some decisions that debase electronic legal acts and question the legal equality of the electronic and paper form of documents,³ **in particular courts of lower instances usually approach this issue positively**. Parties to disputes tend to argue over the content of documents, rather than the validity of an electronic signature, which is displayed to the judge and the parties often as handwritten, and thus primarily undisputed.

In the majority of cases an agreement between two private entities can be thus “signed” e.g. by **sending an ordinary e-mail with a header and footer or name** (especially if used with the meaning of a signature – an acknowledgement of finality and seriousness of intent), **affixing a handwritten signature on the relevant document and its subsequent sending by e-mail in the form of a scanned copy or, with a higher degree of evidentiary reliability, via suitable contracting platforms (such as the globally known platform DocuSign; Czech solutions are available as well), but also by affixing higher-level forms of electronic signature** (an advanced or qualified signature).



¹ In cases where Czech law is applied, see Section 562(1) of the Civil Code with the exception of a requirement for an officially authenticated signature or a public instrument form. This applies despite the Czech case-law, which is extremely formalistic and outdated.

² See Article 3 point 10 and Article 10(25) of Regulation (EU) No 910/2014 of the European Parliament and of the Council (EU) of 23 July 2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (“eIDAS”), and Section 7 of Act no. 297/2016 Sb., on Trust Services for Electronic Transactions, as amended (“Act”).

³ E.g. resolution of the Supreme Court of the Czech Republic no. 26 Cdo 1230/2019-175 of 22 May 2019.

DO YOU NEED TO DEAL WITH PUBLIC AUTHORITIES?

Only a **recognised electronic signature**⁴ can be used in dealings with public authorities (such as a municipal or any state authority). **This applies to all legal acts including contract-making.**

Submissions to public authorities need not bear an electronic signature if sent via a data box. These acts can actually be performed directly by a data box holder (usually an executive representative of a legal entity) via a data box – such a document, although not signed, has the same effects as an act bearing an authentic handwritten signature.⁵

DO YOU NEED TO SOLVE EMPLOYMENT MATTERS?

Compared to dealings between private entities, Czech labour law is unfortunately still very rigid and lags behind the trend. The possibility to use electronic legal acts in employment relationships is limited, as for select important documents (i.e. documents creating, changing and terminating employment or agreements on work performed outside an employment relationship, wage or salary statements, etc.) **the Labour Code lays down unnecessarily strict requirements for electronic delivery.**

As an employer, for transmission of the aforementioned documents via electronic networks (such as e-mail, or the employer's intranet) or by means of electronic communication services (such as a data box) you will need:

- the employee's **prior written consent** to electronic delivery at a provided electronic address;
- to sign a delivered document with a **recognised electronic signature** and
- the employee to **confirm** the receipt of the delivered document by a data message signed **with a recognised electronic signature** within 3 days from being dispatched.

If you fail to meet any of the above conditions, the document will not be considered delivered even if the employee demonstrably familiarised themselves with its content. Delivering documents from an employee to the employer is equally difficult. **For these reasons we always recommend carefully weighing the risks relating to the digitalisation of important documents, on the other hand we do not discourage doing so.**

However, the above conditions do not apply to other (unimportant) employment documents (such as qualifications agreements, liability agreements or wage agreements), which can be signed and delivered similarly as other private acts.



We have been consistently striving to make Czech courts and their case-law eventually recognise the liberalisation of electronic legal acts and their equalisation with the paper form of documents as introduced by European legal regulations and the Czech Civil Code many years ago. Recent new legislation (**in particular the Act on the Right for Digital Services and amendments to acts introducing what is called “banking identity”**), in which our **legislation and digitalisation expert team participated in the drafting to a considerable extent**, will certainly facilitate the further digitalisation of legal acts. The wide use of electronic means that Czech law offers already now will undoubtedly accelerate this trend.



Authors:
Robert Nešpůrek | Partner
Jan Diblík | Partner
František Korbel | Partner

⁴ See Section 6 of the Act, i.e. advanced electronic signature based on a qualified certificate for an electronic signature or a qualified electronic signature. A qualified certificate by means of which you can create a recognised electronic signature can be obtained from any of the certification authorities. **For the duration of the state of emergency** the company **První certifikační autorita, a.s.** offers the possibility of obtaining a qualified certificate for an electronic signature solely online.

⁵ Unless other legal regulations or internal policies require a joint act performed by several persons.