MahWengKwai & Associates

ADVOCATES AND SOLICITORS

Speaker
CASSANDRA NICOLE THOMAZIOS
Partner

Speaker
AKSHAT DRONA
HelloSign APAC BD Lead

Moderator
TOMMY WONG
Associate

Thur 8 April 2021
10:30 am

mwka.com/talks

MWKA ONLINE TALKS in collaboration with DROPBOX

eSignatures & Digital Signatures in Malaysia

DATO' MAH WENG KWAI
CONSULTANT

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About Us

- Welcome to MahWengKwai & Associates!
- Trusted by small medium enterprises (SMEs), family businesses and individuals.
- Established in 1985 by Dato' Mah Weng Kwai, now a consultant with the firm.
- Medium-sized law firm with 23 lawyers and 19 staff.

Our Services

- Full-service law firm with 4 Departments:
  - Corporate
  - Dispute Resolution
  - Employment
  - Individuals & Families

Our Practice Groups

- 5 Practice Groups:
  - ASEAN-China Desk
  - Construction
  - Foreign Direct Investment
  - Real Estate
  - Sports & eSports

MWKA Online Talks

- To share knowledge and raise awareness
- For clients, potential clients and in-house counsel
- Last Talk:
  - 24 March 2021: Legal Agreements in Digital Technology [Cassandra Nicole Thomazios and Tommy Wong]
- Next Talk:
  - 16 April 2021: Data Privacy - Does it exist? [Hannah Patrick, Prisilla Chong, Lum Ying Mei]

Cassandra Nicole Thomazios

- Partner in our Corporate department
- Bachelor of Laws (Hons) from Northumbria University.
- Called to the Bar of England and Wales (Inner Temple) in 2011
- Admitted to the Malaysian Bar in 2012
- LLM (Masters of Law) in Transnational Law, King's College London
- Commercial and corporate matters, drafting corporate project agreements, M&A transactions

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Akshat Drona

- HelloSign APAC and ANZ Channel Lead spearheading the channel partner ecosystem in respective regions
- Extensive experience in Business Development, Product Management, Strategy and Operations Management
- Masters in Business Administration from Northwestern University - Kellogg School of Management (United States of America)
- Masters of Computer Science from Birla Institute of Technology and Science (India)

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Talk Points

MWKA

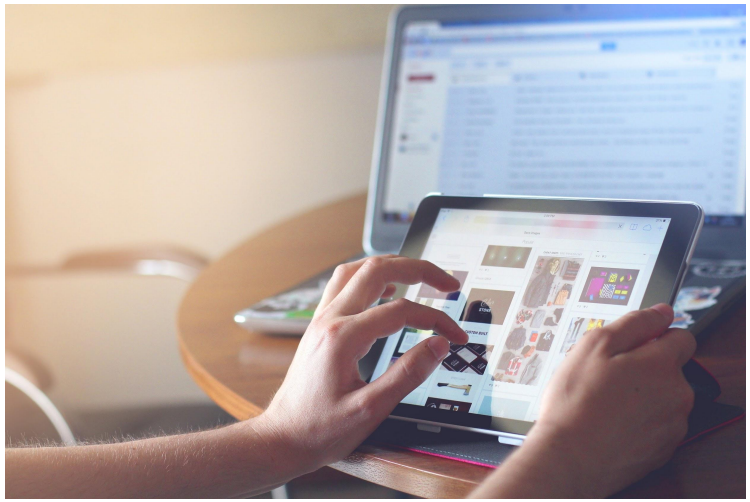
- What are e-Signatures
- Requirements for Enforceable eSignatures
- Digital Signature Act 1997
- Electronic Commerce Act 2006

Dropbox

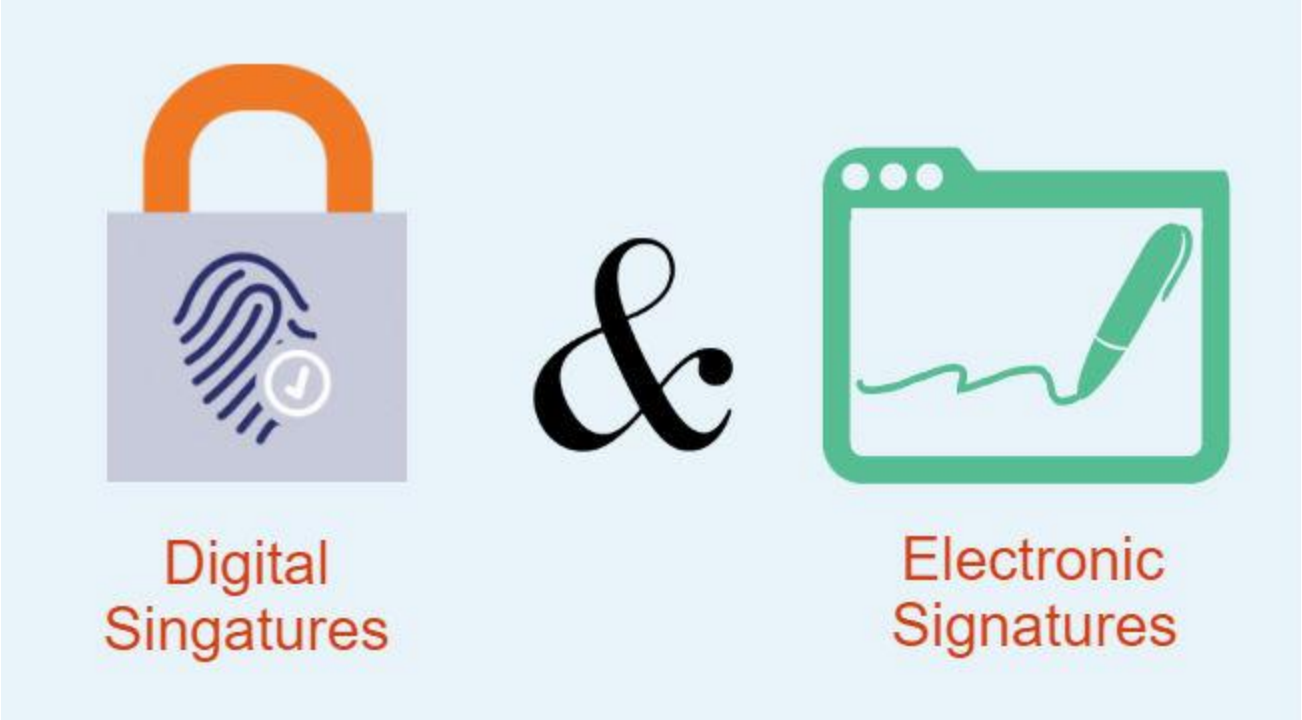
- Introduction to HelloSign product by Dropbox (by Akshat Drona)
- How do e-Signatures work?

Introduction

- Digital technology is important in the world today. Every person who has access to any type of digital technology is dependent on the use and functions of such digital technology.
- As the world continues to evolve, there is a need for more advanced digital technologies.



eSignatures & Digital Signatures



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eSignatures & Digital Signatures

Digital technologies have played a pivotal role in accelerating global growth. In the legal arena, more contracts are now being digitally signed.

- ➔ Electronic Signatures is a method broadly used to sign various forms of documents including contracts
- ➔ Digital Signatures is a type of electronic signature to authorize documents. They embed a unique digital fingerprint onto documents where the signatory is required to possess a certificate-based digital ID in order to link the signatory and document

Digital Signature Act 1997

- Electronic Signatures have been legally enforceable in Malaysia since the Digital Signature Act 1997 and followed later by the Electronic Commerce Act 2006

- "Digital Signature" under the Digital Signature Act 1997 is defined as *"a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine (a) whether the transformation was created using the private key that corresponds to the signer's public key and (b) whether the message had been altered since the transformation was made"*

Requirements for Digital Signature

- a digital signature is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority

- that digital signature was affixed by the signatory with the intention of signing the message; and

- the recipient has no knowledge or notice that the signatory has breached a duty as a subscriber or does not rightfully hold the private key used to affix the digital signature.

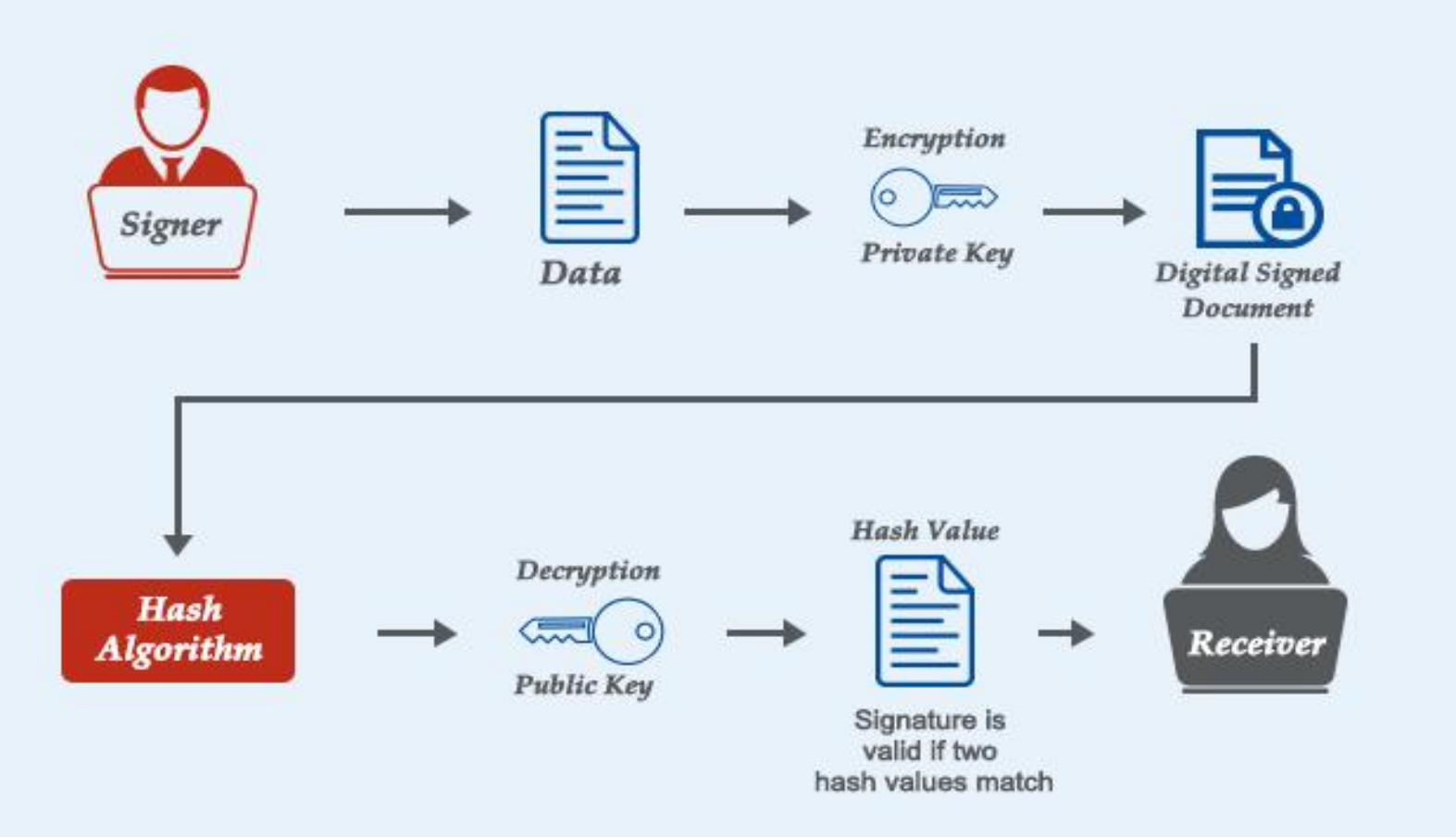
Requirements for Digital Signature

- ➔ Digital signatures use certificate-based digital IDs to authenticate a signatory's identity - high level of security

- ➔ Each signature is bonus to the document with encryption which is proof of signing and is validated through licensed certification authorities.

There are presently 4 certification authorities licensed in Malaysia to issue legally binding digital certificates.

Digital Signatures



What are e-Signatures?

- An electronic signature refers to a signature in an electronic form and used by a signatory on a platform to sign a document

- For some documents, electronic signatures can replace handwritten signatures

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Where are e-Signatures used?

- legal documents such as NDA's, commercial agreements
- employment contracts
- internal documents for employees within a company such as onboarding forms for quick and secure access
- consumer and sales agreements
- signing off letters

Advantages of e-Signatures

- There may be a need to sign a contract in another geographic location within a short frame
- Saves administrative costs
- e-Signatures may help close deals fast and more efficiently

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Electronic Commerce Act 2006

The Electronic Commerce Act 2006 recognises the communication of acceptance of proposals and formation of legally binding contracts signed via any electronic format.

- **e-Signatures -** is defined as any “letter, character, number, sound or any other symbol or any combination thereof created in an electronic form adopted by a person as a signature”

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Requirements for enforceable eSignatures

- Under the Contracts Act 1950 - A contract is valid and legal when competent parties consent and reach an agreement regardless of whether on physical paper, electronic or verbal.

Electronic Commerce Act 2006

➔ an electronic signature must be attached to or logically associated with the document

➔ must adequately identify the signatory and his/her approval to which the signature relates

➔ is reliable & appropriate given the purpose and circumstances to which the signature is required

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Requirements for enforceable eSignatures

Electronic Commerce Act 2006

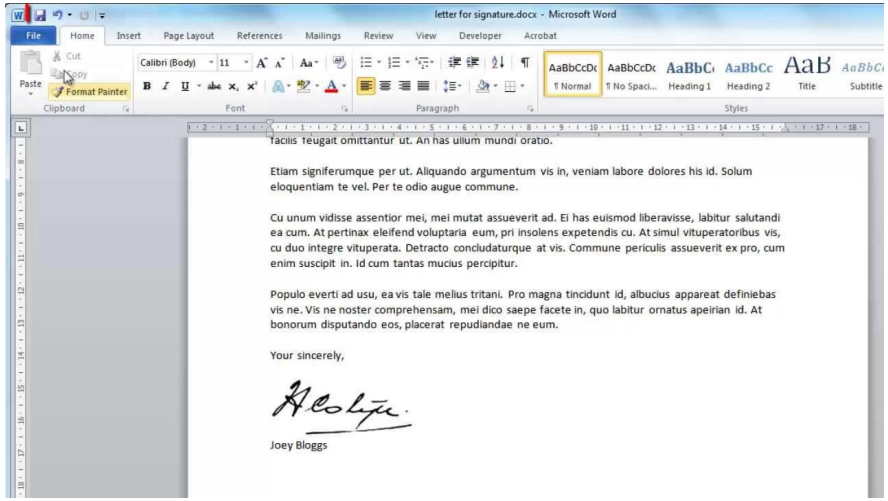
The following conditions are to be met for electronic signatures:

- ➔ means of creating the electronic signature must be linked and under the control of the signatory only;
- ➔ any change to the signature post-signing must be detectable;
- ➔ any change to the document post-signing must be detectable.

Requirements for enforceable eSignatures

Electronic Commerce Act 2006

Section 10 - “where any law requires a seal to be affixed to a documents, the requirement of the law is fulfilled (if the document is in the form of an electronic message) by a digital signature as provided under the Digital Signature Act 1996”



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Requirements for enforceable eSignatures

Electronic Commerce Act 2006

Some transactions and documents may not be executed electronically:

- Powers of Attorney
- Wills, Codicils & Trusts
- Negotiable instruments such as bills of exchange, promissory notes and cheques
- Documents which is required to be notarized or attested before a public notary or commissioner of oaths
- Statutory declarations

Case law

Yam Kong Seng & Anor v Yee Weng Kai [2014] 4 MLRA 316

- ➔ illustrates the point relating to identifying the signatory
- ➔ the legal requirement for an electronic signature was fulfilled as the sender was adequately identified under the Electronic Commerce Act by using the telephone number of the respondent which an SMS was sent confirming that it came from the respondent as the registered owner of that telephone.
- ➔ This itself was adequate information to verify the sender
- ➔ This case confirms that electronic signature can be in the form of any mark created by any electronic technology

Key Takeaways

- Be aware of the difference between electronic signatures and digital signatures
- Be mindful of the legal conditions that need to be met for e-signatures to be valid under the Electronic Commerce Act
- Using e-signature other than digital signature may be more open to challenge on legal validity in cases where a seal is traditionally needed
- There is still uncertainty whether e-signatures may be used on certain documents such as share transfer forms or property transfer forms which typically require physical handwritten signatures under common seal

Key Takeaways

In the event parties do not wish to take a risk on whether the type of agreement, contract or document may be electronically signed, an alternative would be to have the document signed in counterparts, that is, for each party to sign the document separately and deliver the same to the other by courier or post. A counterpart clause may be drafted into agreements to cater for signing in counterparts.

Regardless, most service-level agreements, letters and sales contracts are typically electronically signed today.

Key Takeaways

How do e-Signatures work?

- HelloSign is an example of an e-signature platform
- HelloSign is a product of Dropbox

Common questions

➔ How do I e-sign a letter?

➔ How do I e-sign a contract?

➔ Can I choose my e-signature?

➔ Can I draw my e-signature?

➔ What would a e-signature look like?

Upcoming topics

Date (Day)	Topic Title	Speaker(s)
16 April 2021 (Wed)	Data Privacy - Does it exist?	Hannah Patrick, Prisilla Chong, Lum Ying Mei

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Questions?

Thank you!

Notice: This presentation does not constitute legal advice and its contents should not be relied upon as such. The facts and circumstances of each and every case will differ and therefore will require specific legal advice. Feel free to contact us for legal consultation.

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