

E-signature

A new service for clients

LAWLAB | ARROW | LPM

Allens is piloting e-signing, using DocuSign, a cloud-based independent platform, with the aim of making closing deals easier, quicker and more cost effective.

It saves paper, improving sustainability and saving costs. It can be more reliable than other methods used in the market for signing.

One great advantage is that parties can sign a document wherever they are, on their desktop, their laptop, their tablet or their smartphone, in the office ... or at the beach. It saves those last-minute scrambles coordinating paper versions, getting them to the people who need to sign, and ensuring that everyone signs the same version.

Helping you establish your own e-signature program

Allens is already helping clients setting up e-signature in their own businesses, dealing with suppliers, and helping with the practical and legal issues. We can do the same for you

When can it be used?

It can be used in major wholesale transactions. For example, it was used in a recent major syndicated loan agreement.

It can be used for retail and flow transactions. And it is ideal for use when a mass of documentation needs to be signed. As an example, Allens is currently acting on a major new home unit development, where hundreds of units are to be sold off the plan. Allens paralegals will be there at the launch with tablets and laptops, ready to prepare the individual contracts for the buyers, and have them signed electronically.

It can be used not only for contractual documents but also in internal and external processes.

How does it work?



Allens **uploads** document onto DocuSign.



DocuSign **emails a link** to the document as a pdf to those parties who are to sign it or otherwise deal with it. Documents can be witnessed.



Representatives from each party receive a link, all they have to do is open it, and follow the instructions.



If they need to sign it, they click on a tab where indicated. Their **signatures** are then irrevocably incorporated into the pdf.

Parties who receive the document can download the completed pdf document, which will show all the signatures. Only parties who receive an email can sign it. There are other security options to reduce the risk of fraudulent signature.

Does it work legally? Can it create binding documents?

Under Australian law, in our view, broadly, yes. Speaking generally, legally binding documents can be created and executed, even when there is a legal requirement for them to be signed or in writing.

This includes where companies are signing under section 127 of the *Corporations Act 2001* (Cth). And where a state, territory or Commonwealth *Electronic Transactions Act* applies, it even extends to deeds.

Where there is any doubt, the printout of the document can be a complying original counterpart.

While we are confident in our views, they are not universally shared as to s127 and deeds.

The documents are stored offshore in the cloud – does this create any difficulties?

Broadly, e-signature does not give rise to risks beyond those already facing organisations that communicate or otherwise do business electronically. As always, companies must ensure that privacy and security risks are properly considered and statutory requirements are satisfied.

- **Privacy law:** In our view, Australian privacy law issues that may arise are minor and easily solved as a practical matter. This is based in part on our understanding that when documents are uploaded to DocuSign, the content is encrypted and DocuSign has no control of, or access to, the contents of the documents.
- **Security and cloud storage:** As always, when engaging an external service provider to store documents and information in the cloud, users must be satisfied that the cloud service provider can protect the security of documents and other data, and should also be satisfied that documents uploaded to the platform are protected from unauthorised changes. For our own particular purposes we were sufficiently satisfied when we made our investigations.
- **Data sovereignty:** As with all cloud-based storage, where the server is hosted overseas, the service provider will be subject to both its local laws regarding data protection and the laws of the nation hosting the server. Foreign government agencies can legally have more extensive powers to access information. However, we understand DocuSign has no control of, or access to, the contents of the documents, and for other reasons, we do not believe that use of the overseas cloud-based storage services adds substantially to the risk of legal access when compared with domestic storage.



Who do I call?

If you want a demonstration, contact our DocuSign Pilot Manager
Alice Wald **T** +61 3 9613 8976

If you have questions, feel free to get in touch with your usual Allens contact.

Alternatively, if you have queries contact:

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